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# Federal Register

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8357 of April 3, 2009**

## Education and Sharing Day, U.S.A., 2009

**By the President of the United States of America**

**A Proclamation**

The education we provide our children must prepare them to succeed in a global economy and to contribute to their communities. Commemorating Education and Sharing Day, U.S.A., we underscore our commitment to a competitive and complete education.

The professional demands of today's workplace require a renewed commitment to education. Our youngest children need a strong early foundation. Standards must be raised, curricula must be enhanced, and teachers must be supported. Families, communities, and educators must collaborate to ensure that students are working hard and receiving the best instruction possible.

Yet knowledge alone will not bring the future our children deserve. Our schools and community institutions must also help each child develop a moral compass. Education must blend basic American values such as honesty, personal responsibility, and service. These indispensable elements will not only help children succeed in challenging work environments, they will also help our youth engage in and contribute to their communities.

Few have better understood or more successfully promoted these ideas than Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, who emphasized the importance of education and good character. Through the establishment of educational and social service institutions across the country and the world, Rabbi Schneerson sought to empower young people and inspire individuals of all ages. On this day, we raise his call anew.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 5, 2009, as ''Education and Sharing Day, U.S.A., 2009.'' I call upon all the people of the United States to look to the future with a renewed sense of civic engagement and common purpose.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–8137
Filed 4–7–09; 8:45 am]
Billing code 3195–W9–P

# Rules and Regulations

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

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM401; Special Conditions No. 25–380–SC]**

## Special Conditions: Rosemount Aerospace Inc., Modification to Boeing 737–600, –700, –800, and –900 Series Airplanes: Lithium Battery Systems

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Boeing 737–600, –700, –800, and –900 Series airplanes. These airplanes, as modified by Rosemount Aerospace Inc., will have a novel or unusual design feature associated with the installation of lithium batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is March 30, 2009. We must receive your comments by May 26, 2009.

**ADDRESSES:** You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM401, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM401. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Nazih Khaouly, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval, and thus delivery, of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reasons for recommended changes, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

### Background

On October 4, 2007, Rosemount Aerospace Inc. applied for a supplemental type certificate for the installation of a Rosemount Aerospace Inc., 8700A1–3 Series Electronic Flight Bag (EFB) in Boeing 737–600, –700, –800, and –900 Series airplanes.

### Type Certification Basis

Under the provisions of § 21.101, Rosemount Aerospace Inc. must show that the Boeing 737–600, –700, –800, and –900 Series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type-certification basis.'' The regulation incorporated by reference in A16WE is 14 CFR 25.1353 at Amendment 25–38.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Rosemount Aerospace Inc. EFB because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Rosemount Aerospace Inc., Boeing 737–600, –700, –800, and –900 Series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

**Novel or Unusual Design Features**

The Rosemount Aerospace Inc. modification to Boeing 737–600, –700, –800, and –900 Series airplanes will incorporate the following novel or unusual design feature: a lithium battery system.

**Discussion**

The current regulations governing installation of batteries in large, transport-category airplanes were derived from Civil Air Regulations (CAR) Part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR Part 25 in February 1965. The new battery requirements, 14 CFR 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures, which led to additional rulemaking affecting large, transport-category airplanes as well as small airplanes. On September 1, 1977 and March 1, 1978, the FAA issued 14 CFR 25.1353(c)(5) and (c)(6), respectively, governing nickel-cadmium battery installations on large, transport-category airplanes.

The proposed use of lithium batteries for equipment and systems on Boeing 737–600, –700, –800, and –900 Series airplanes has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium batteries that could affect the safety and reliability of lithium-battery installations on Boeing 737–600, –700, –800, and –900 Series airplanes.

At present, the airplane industry has limited experience with the use of rechargeable lithium batteries in commercial-aviation applications. However, other users of this technology, including wireless-telephone manufacturers and the electric-vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging, over-discharging, and flammability of cell components.

*1. Overcharging*

In general, lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. The severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

*2. Over-Discharging*

Discharge of some types of lithium batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements, commonly available to flight crews, as a means of checking battery status—a problem shared with nickel-cadmium batteries.

*3. Flammability of Cell Components*

Unlike nickel-cadmium and lead-acid batteries, some types of lithium batteries use flammable liquid electrolytes. The electrolyte can serve as a source of fuel for an external fire if the battery container is breached.

These data, recorded by users of lithium batteries, raise concerns about the use of these batteries in commercial aviation. The intent of the proposed special condition is to establish appropriate airworthiness standards for lithium-battery installations in Boeing 737–600, –700, –800, and –900 Series airplanes and to ensure, as required by 14 CFR 25.1309 and 25.601, that these battery installations are not hazardous or unreliable.

**Applicability**

As discussed above, these special conditions are applicable to the Rosemount Aerospace Inc., 8700A1–3 Series Electronic Flight Bag. Should Rosemount Aerospace Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16WE, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

**Conclusion**

This action affects only certain novel or unusual design features on Rosemount Aerospace Inc., 8700A1–3 Series EFBs installed on Boeing 737–600, –700, –800, and –900 Series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing 737–600, –700, –800, –900 Series airplanes modified by Rosemount Aerospace Inc. Lithium batteries and battery installations on Boeing 737–600, –700, –800, and –900 Series airplanes must be designed and installed as follows:

1. Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition, and during any failure of the charging or battery-monitoring system not shown to be extremely remote. The lithium-battery installation must preclude explosion in the event of those failures.

2. Design of the lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

3. No explosive or toxic gases, emitted by any lithium battery in normal operation, or as the result of any failure of the battery-charging system, monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

4. Installations of lithium batteries must meet the requirements of 14 CFR 25.863(a) through (d).

5. No corrosive fluids or gases that may escape from any lithium battery

may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more-severe failure condition, in accordance with 14 CFR 25.1309(b) and applicable regulatory guidance.

6. Each lithium-battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

7. Lithium battery installations must have a system to automatically control the charging rate of the battery, to prevent battery overheating or overcharging, and,

a. A battery-temperature-sensing and over-temperature-warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

b. A battery-failure-sensing-and-warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

8. Any lithium-battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring-and-warning feature that provides an indication to the appropriate flight-crew members when the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

9. The Instructions for Continued Airworthiness, required by 14 CFR 25.1529 (and 26.11), must contain maintenance steps to:

a. Assure that the lithium battery is sufficiently charged at appropriate intervals specified by the battery manufacturer.

b. Ensure the integrity of lithium batteries in spares-storage to prevent the replacement of batteries, whose function is required for safe operation of the airplane, with batteries that have experienced degraded charge-retention ability or other damage due to prolonged storage at a low state of charge.

The Instructions for Continued Airworthiness maintenance procedures must contain precautions to prevent mishandling of the lithium battery, which could result in short-circuit or other unintentional damage that, in turn, could result in personal injury or property damage.

**Note 1:** The term ''sufficiently charged'' means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where the battery's ability to charge and retain a full charge is reduced. This reduction would be greater than the reduction that may result from normal, operational degradation.

**Note 2:** These special conditions are not intended to replace 14 CFR 25.1353(b) in the certification basis of the Boeing 737–600, –700, –800, and –900 Series airplanes. These special conditions apply only to lithium batteries and their installations. The requirements of 14 CFR 25.1353(b) remain in effect for batteries and battery installations in Boeing 737–600, –700, –800, and –900 Series airplanes that do not use lithium batteries.

Compliance with the requirements of these special conditions must be shown by test, or analysis by the Aircraft Certification Office, or its designees, with the concurrence of the FAA Transport Airplane Directorate.

Issued in Renton, Washington, on March 30, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–7907 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM402; Special Conditions No. 25–381–SC]**

## Special Conditions: TTF Aerospace, LLC, Modification to Boeing Model 767–400 Series Airplanes; Aft Lower-Lobe Crew-Rest Module (CRM)

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 767–400 series airplanes. These airplanes, modified by TTF Aerospace, LLC (TTF), will have a novel or unusual design feature associated with an aft, lower-lobe, crew-rest module (CRM). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date for these special conditions is March 31, 2009. We must receive comments by May 26, 2009.

**ADDRESSES:** Please mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM402, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the same address. You must mark your comments: Docket No. NM402. You can inspect comments in the Rules Docket weekdays, except federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** John Shelden, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–2785; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment is impracticable, because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

**Background**

On June 20, 2008, TTF Aerospace, LLC, applied for a supplemental type certificate to permit installation of an aft, lower-lobe, crew-rest module (CRM) in Boeing 767–400 series airplanes.

The CRM will be a one-piece, self-contained unit to be installed under the passenger-cabin floor in the aft portion of the aft cargo compartment. It will be attached to the existing cargo-restraint system, and the aft portion of the crew rest will be hard-mounted to the aircraft structure. Occupancy for the CRM will be limited to a maximum of five (5) occupants. An approved seat or berth, able to withstand the maximum flight loads when occupied, will be provided for each occupant permitted in the CRM. The CRM is intended to be occupied only in flight, i.e., not during taxi, takeoff, or landing. A smoke-detection system, manual fire-fighting system, oxygen system, and occupant amenities will be provided.

Two entry/exits between the main-deck area will be required. The floor structure will be modified to provide access for the main-entry hatch and the emergency-access hatch.

**Type Certification Basis**

Under the provisions of § 21.101, TTF must show that Boeing Model 767–400 series airplanes, with the CRM, continue to meet either:

(1) The applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, or

(2) The applicable regulations in effect on the date of TTF's application for the change.

The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type-certification basis.'' The certification basis for Boeing Model 767–400 series airplanes is 14 CFR part 25, as amended by Amendments 25–1 through 25–89. Refer to Type Certificate No. A1NM for a complete description of the certification basis for this model.

According to 14 CFR 21.16, if the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Boeing Model 767–400 series airplanes because of a novel or unusual design feature, the Administrator prescribes special conditions for the airplane.

As defined in 14 CFR 11.19, special conditions are issued in accordance with 14 CFR 11.38 and become part of the type-certification basis in accordance with 14 CFR 21.101.

Special conditions are initially applicable to the model for which they are issued. If the type certificate for that model is amended to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to that model. Similarly, if any other model already included on the same type certificate is modified to incorporate the same or similar novel or unusual design feature, the special conditions would apply to that other model under the provisions of 14 CFR 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 767–400 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

**Novel or Unusual Design Features**

While installation of a CRM is not a new concept for large, transport-category airplanes, each module has unique features based on its design, location, and use. The CRM to be installed on the Boeing Model 767–400 series airplanes is novel in that it will be located below the passenger-cabin floor in the aft portion of the aft cargo compartment.

Because of the novel or unusual features associated with the installation of a CRM, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificates of these airplanes. These special conditions do not negate the need to address other applicable part 25 regulations.

**Operational Evaluations and Approval**

These special conditions specify requirements for design approvals (i.e., type-design changes and supplemental type certificates) of CRMs administered by the FAA's Aircraft Certification Service. The FAA's Flight Standards Service, Aircraft Evaluation Group, must evaluate and approve the ''basic suitability'' of the CRM for occupation by crewmembers before the module may be used. If an operator wishes to use a CRM as ''sleeping quarters,'' the module must undergo an additional operational evaluation and approval. The Aircraft Evaluation Group would evaluate the CRM for compliance to §§ 121.485(a) and 121.523(b), with Advisory Circular 121–31, Flight Crew Sleeping Quarters and Rest Facilities, providing one method of compliance to these operational regulations.

To obtain an operational evaluation, the supplemental-type-design holder must contact the Aircraft Evaluation Group within the Flight Standards Service that has operational-approval authority for the project. In this instance, it is the Seattle Aircraft Evaluation Group. The supplemental-type-design holder must request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of the crew-rest module. The supplemental-type-design holder may make this request concurrently with the demonstration of compliance with these special conditions.

The Boeing Model 767–400 Flight Standardization Board Report Appendix will document the results of these evaluations. In discussions with the FAA Principal Operating Inspector, individual operators may refer to these standardized evaluations as the basis for an operational approval, instead of an on-site operational evaluation.

Any change to the approved CRM configuration requires an operational re-evaluation and approval, if the change affects any of the following:

- Procedures for emergency egress of crewmembers,
- Other safety procedures for crewmembers occupying the CRM, or
- Training related to these procedures.

The applicant for any such change is responsible for notifying the Seattle Aircraft Evaluation Group that a new evaluation of the CRM is required.

All instructions for continued airworthiness, including service bulletins, must be submitted to the Seattle Aircraft Evaluation Group for approval before the FAA approves the modification.

**Discussion of Special Conditions No. 9 and 12**

The following clarifies the intent of Special Condition No. 9 relative to the requirements of § 25.1439(a):

> Amendment 25–38 modified the requirements of § 25.1439(a) by adding, ''In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.''

The CRM is an isolated, separate compartment, so § 25.1439(a) is applicable. However, the requirements of § 25.1439(a) for protective breathing equipment in isolated, separate compartments are not appropriate, because the CRM is novel and unusual in terms of the number of occupants.

In 1976, when Amendment 25–38 was adopted, small galleys were the only

isolated, separate compartments that had been certificated. Two crewmembers were the maximum expected to occupy those galleys.

These special conditions address a CRM which can accommodate up to five crewmembers. This number of occupants in an isolated, separate compartment was not envisioned at the time Amendment 25–38 was adopted. It is not appropriate for all occupants to don protective breathing equipment in the event of a fire, because the first action should be for each occupant to leave the confined space, unless that occupant is fighting the fire. Taking the time to don protective breathing equipment would prolong the time for the emergency evacuation of the occupants and possibly interfere with efforts to extinguish the fire.

Regarding Special Condition No. 12, the FAA considers that during the 1-minute smoke-detection time, penetration of a small quantity of smoke from the aft, lower-lobe, CRM into an occupied area of the airplane would be acceptable, given the limitations in these special conditions. The FAA considers that the special conditions place sufficient restrictions on the quantity and type of material allowed in crew carry-on bags that the threat from a fire in the remote CRM would be equivalent to the threat from a fire in the main cabin.

**Applicability**

As discussed above, these special conditions are applicable to Boeing Model 767–400 series airplanes as modified by TTF to include an aft lower-lobe CRM. If TTF Aerospace applies at a later date for a change to the supplemental type certificate to include another model listed on the same type-certificate data sheet, which incorporates the same or similar novel or unusual design feature, these special conditions would also apply to that model.

**Conclusion**

This action affects only certain novel or unusual design features on Boeing Model 767–400 series airplanes. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for the Boeing Model 767–400 series airplanes, modified by TTF Aerospace.

1. Occupancy of the aft, lower-lobe, crew-rest module (CRM) is limited to the total number of installed bunks and seats in each module. An approved seat or berth, able to withstand the maximum flight loads when occupied for each occupant permitted in the CRM, must be provided. The maximum occupancy in the CRM is five.

(a) There must be appropriate placard(s) displayed in a conspicuous place at each entrance to the CRM to indicate the following:

(1) The maximum number of occupants;

(2) Occupancy is restricted to crewmembers who are trained in evacuation procedures for the CRM;

(3) Occupancy is prohibited during taxi, take-off and landing;

(4) Smoking is prohibited in the CRM;

(5) Hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited in the CRM.

(6) Stowage in the CRM must be limited to emergency equipment, airplane-supplied equipment (e.g., bedding), and crew personal luggage. Cargo or passenger baggage is not allowed.

(b) At least one ashtray must be located conspicuously on or near the side of any entrance to the CRM.

(c) A means must be available to prevent passengers from entering the CRM in the event of an emergency or when no flight attendant is present.

(d) Any door installed between the CRM and the passenger cabin must be designed to be opened quickly from inside the module, even when crowding occurs at each side of the door.

(e) All doors installed in the evacuation routes must be designed to prevent anyone from being trapped inside the module. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the module at any time.

2. At least two emergency evacuation routes must be available, each of which can be used by each occupant of the CRM to rapidly evacuate to the main cabin. The exit door/hatch for each route must be able to be closed from the main cabin after evacuation of the CRM. In addition:

(a) The routes must be located with one at each end of the module, or with two having sufficient separation within the module and between the routes to minimize the possibility of an event (either inside or outside the CRM) rendering both routes inoperative.

(b) The routes must minimize the possibility of blockage which might result from fire, mechanical, or structural failure, or from persons standing on top of or against the escape route. If an evacuation route uses an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If a hatch is installed in an evacuation route, the point at which the evacuation route terminates in the passenger cabin should not be located where normal movement by passengers or crew occurs. Examples include the main aisle, cross aisle, passageway, or galley complex. If it is not possible to avoid such a location, the hatch or door must be capable of being opened when a person, the weight of a 95th percentile male, is standing on the hatch or door. The use of evacuation routes must not depend on any powered device. If low headroom is at or near an evacuation route, provisions must be in place to prevent or to protect occupants of the CRM from head injury.

(c) Emergency-evacuation procedures must be in place, including procedures for the emergency evacuation of an incapacitated occupant from the crew-rest module. All of these procedures must be transmitted to all operators for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation, in the Airplane Flight Manual or other suitable means, for training crewmembers in the use of evacuation routes.

3. An incapacitated person, representative of a 95th percentile male, must be capable of being evacuated from the CRM to the passenger-cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant within the CRM) may provide assistance in the evacuation. Up to three persons in the main passenger compartment may provide additional assistance. For evacuation routes having stairways, the additional assistants may descend to one-half the elevation change from the main deck to the lower-deck compartment or to the first landing, whichever is higher.

4. The following signs and placards must be provided in the CRM:

(a) At least one exit sign, which meets the requirements of § 25.812(b)(1)(i) at Amendment 25–58, located near each exit. However, the exit sign may have a

reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (e.g., white, cream, or light beige). If the material surrounding the exit sign is not light in color, an exit sign with a minimum of a one-inch-wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit, defining the location and the operating instructions for each evacuation route;

(c) Placards must be readable from a distance of 30 inches under emergency-lighting conditions; and

(d) The exit handles and placards (see 4.(b) above) for each evacuation route must be illuminated to at least 160 micro-lamberts under emergency-lighting conditions.

5. In the event of failure of the airplane's main power system or of the normal lighting system for the CRM, emergency illumination to the CRM must be automatically provided.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency- and main-lighting systems, if the power supply to the emergency-lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the CRM to locate and transfer to the main passenger-cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient for each occupant of the CRM to locate a deployed oxygen mask, including when privacy curtains, if installed, are in the closed position.

6. Two-way voice communications must be available between crewmembers on the flightdeck and occupants of the CRM. Public-address-system microphones must be located at each flight-attendant seat that is required to be near a floor-level exit in the passenger cabin, per § 25.785(h) at Amendment 25–51. The public-address system must allow two-way voice communications between flight attendants and the occupants of the CRM. However, one microphone may serve more than one exit, if the proximity of the exits allows unassisted verbal communication between seated flight attendants.

7. Manual activation of an aural emergency-alarm system must be available, audible during normal and emergency conditions, to enable crewmembers, on the flight deck and at each pair of required floor-level emergency exits, to alert occupants of the CRM to an emergency situation. Use of a public-address or crew-interphone system is acceptable, provided it has an adequate means of differentiating between normal and emergency communications. The system must be powered, in flight, for at least ten minutes after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources that depend on the continued operation of the engines and auxiliary power units.

8. An indication to fasten seatbelts must be readily detectable by seated or standing occupants of the CRM. In the event no seats are available, at least one means, such as sufficient handholds, must be in place to address anticipated turbulence. Seatbelt-type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. A placard must be located on each berth requiring that seat belts be fastened when the berth is occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, a placard must identify the head position.

9. In lieu of the requirements specified in § 25.1439(a) at Amendment 25–38 that pertain to isolated compartments, and to provide a level of safety equivalent to that which is provided occupants of a small, isolated galley, the following equipment must be provided in the CRM:

(a) At least one approved, hand-held fire extinguisher, appropriate for the kinds of fires likely to occur; and

(b) Protective breathing equipment approved to Technical Standard Order (TSO)–C116 (or equivalent), suitable for fire-fighting for at least two persons. If three or more hand-held fire extinguishers are installed, protective breathing equipment must be available for one person for each hand-held fire extinguisher.

**Note:** Additional protective breathing equipment and fire extinguishers in specific locations (beyond the minimum numbers prescribed in Special Condition No. 9) may be required as a result of any egress analysis accomplished to satisfy Special Condition No. 2(a).

(c) One flashlight.

10. A smoke- or fire-detection system (or systems) must be installed to monitor each occupiable area within the CRM, including areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide the following:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the CRM; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The CRM must be designed so that fires within the CRM can be controlled without a crewmember entering the module or so that crewmembers equipped for fire fighting have unrestricted access to the module. The time for a crewmember on the main deck to react to the fire alarm, don protective gear (such as protective breathing equipment and gloves), obtain fire-fighting equipment, and gain access to the module must not exceed the time for the module to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means to exclude hazardous quantities of smoke or extinguishing agent, originating in the CRM, from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the CRM and, if applicable, when accessing the CRM to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers, when the entrance to the CRM is opened during an emergency evacuation, must dissipate within five minutes after the entrance to the module is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the CRM. (The amount of smoke entrained by a firefighter exiting the module through the access is not considered hazardous). During the 1-minute smoke-detection time, penetration of a small quantity of smoke from the CRM into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used instead of manual fire fighting, the fire-extinguishing system must be designed so that no hazardous quantities of extinguishing agent enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the CRM, considering the fire threat, the volume of the module, and the ventilation rate.

13. A supplemental oxygen system must be provided, equivalent to that provided for main-deck passengers, for

each seat and berth in the CRM. The system must provide aural and visual signals to warn the CRM occupants to don oxygen masks in the event of decompression. The warning must activate before the cabin-pressure altitude exceeds 15,000 feet, and must sound continuously for a minimum of five minutes or until a reset pushbutton in the CRM is depressed. Procedures for occupants of the CRM to follow, in the event of decompression, must be established. These procedures must be transmitted to the operators for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to CRMs that are divided into several sections by curtains or partitions:

(a) To warn sleeping occupants, an aural alert must be in place, that is audible in each section of the CRM, and that accompanies automatic presentation of supplemental-oxygen masks. In each section where seats or berths are not installed, there must be a visual indicator that occupants must don oxygen masks. A minimum of two supplemental oxygen masks is required for each seat or berth. The crewmembers must also be able to manually deploy the oxygen masks from the flightdeck.

(b) A placard must be located adjacent to each curtain that visually divides or separates the CRM into small sections for privacy. The placard must specify that the curtain remains open when the private section it creates is unoccupied.

(c) For each section of the CRM created by a curtain, the following requirements of these special conditions apply, both with the curtain open and with the curtain closed:

(1) Emergency illumination (Special Condition No. 5);

(2) Emergency alarm system (Special Condition No. 7);

(3) Seatbelt-fasten signal (see Special Condition No. 8) or return-to-seat signal, as applicable; and

(4) Smoke- or fire-detection system (Special Condition No. 10).

(d) Crew-rest modules, visually divided to the extent that evacuation could be affected, must contain exit signs that direct occupants to the primary stairway exit. Exit signs must be located in each separate section of the CRM, and that meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58. An exit sign with reduced background area, as described in Special Condition No. 4(a), may be used to meet this requirement.

(e) For sections within a CRM that are created by a partition with a door separating the sections, the following requirements of these special conditions must be met both with the door open and with the door closed:

(1) A secondary evacuation route must be available from each section to the main deck. Alternatively, any door between the sections must preclude anyone from being trapped inside the compartment. The ability to remove an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room, designed for only one occupant for a short time, such as a changing area or lavatory, is not required. However, the ability to remove an incapacitated occupant from within this area must be considered.

(2) Doors between the sections must be capable of opening when crowded against, even when crowding occurs at each side of the door.

(3) No more than one door may be located between any seat or berth and the primary stairway exit.

(4) Exit signs must be located in each section, and must meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58. These signs must direct occupants to the primary stairway exit. An exit sign with reduced background area, as described in Special Condition No. 4(a), may be used to meet this requirement.

(5) The following Special Conditions apply both with the door open and with the door closed:

- Special Conditions No. 5 (emergency illumination),
- No. 7 (emergency alarm system),
- No. 8 (fasten-seatbelt signal or return-to-seat signal, as applicable) and
- No. 10 (smoke- or fire-detection system)

(6) Special Conditions No. 6 (two-way voice communication) and No. 9 (emergency fire-fighting and protective equipment) apply independently for each separate section, except for lavatories or other small areas that are not occupied for extended periods.

15. Each waste-disposal receptacle must have a built-in fire extinguisher that discharges automatically upon occurrence of a fire in the receptacle.

16. Materials, including finishes or decorative surfaces applied to the materials, must comply with the flammability requirements of § 25.853 at Amendment 25–116, and mattresses must comply with the applicable flammability requirements of § 25.853(c) at Amendment 25–116.

17. All lavatories within the CRM must meet the requirements for a lavatory installed on the main deck, except with regard to Special Condition No.10 for smoke detection.

18. When a CRM is installed or enclosed as a removable module in part of a cargo compartment or is located directly adjacent to a cargo compartment without an intervening cargo compartment wall, the following apply:

(a) Any wall of the module that forms part of the boundary of the reduced cargo compartment, subject to direct flame impingement from a fire in the cargo compartment, and that includes any interface between the module and the airplane structure or systems, must meet the applicable requirements of § 25.855 at Amendment 25–72.

(b) When the CRM is not installed, the fire-protection level of the cargo compartment must comply with the following regulations:

- § 25.855 at Amendment 25–72,
- § 25.857 at Amendment 25–60, and
- § 25.858 at Amendment 25–54.

(c) Use of each emergency-evacuation route must not require occupants of the CRM to enter the cargo compartment to allow them to return to the passenger compartment.

(d) The aural warning in Special Condition No.7 must sound in the CRM in the event of a fire in the cargo compartment.

19. All enclosed stowage compartments within the CRM that are not limited to stowage of emergency equipment or airplane-supplied equipment (e.g., bedding) must meet the design criteria in the table below. As indicated in the table, this special condition does not address enclosed stowage compartments with an interior volume greater than 200 cubic feet.

(Fire protection for such large stowage compartments would necessitate design requirements and operational procedures similar to those for Class C cargo compartments.)

| Fire protection features | Stowage compartment interior volumes | | |
|---|---|---|---|
| | Less than 25 $ft^3$ | 25 $ft^3$ to 57 $ft^3$ | 57 $ft^3$ to 200 $ft^3$ |
| Materials of Construction [1] | Yes | Yes | Yes. |

| Fire protection features | Stowage compartment interior volumes | | |
|---|---|---|---|
| | Less than 25 ft[3] | 25 ft[3] to 57 ft[3] | 57 ft[3] to 200 ft[3] |
| Detectors[2] | No | Yes | Yes. |
| Liner[3] | No | No | Yes. |
| Locating Device[4] | No | Yes | Yes. |

[1] Material: The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards for interior components specified in § 25.853. For compartments with an interior volume less than 25 cubic feet, the design must contain a fire likely to occur within the compartment under normal use.

[2] Detectors: Enclosed stowage compartments equal to or exceeding 25 cubic feet in interior volume must have a smoke- or fire-detection system to ensure that a fire can be detected within 1 minute. Flight tests must be conducted to show compliance with this requirement. Each system must provide the following:

(a) A visual indication in the flight deck within 1 minute after the start of a fire;

(b) An aural warning in the CRM; and

(c) A warning in the main passenger compartment. This warning must be readily detectable by a flight attendant, taking into account the location of flight attendants throughout the main passenger compartment during various phases of flight.

[3] Liner: If the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment, then no liner would be required for enclosed stowage compartments equal to or greater than 25 cubic but less than 57 cubic feet in interior volume. For those enclosed stowage compartments the interior volume of which is equal to or greater than 57 cubic feet, but less than or equal to 200 cubic feet, the liner must meet the requirements of § 25.855 at Amendment 25–72 for a Class B cargo compartment.

[4] Location Detector: Crew-rest areas that contain enclosed stowage compartments interior volumes of which exceed 25 cubic feet, and that are located away from one central location, such as the entry to the CRM or a common area within the CRM, would require additional fire-protection devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on March 31, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–7901 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM395; Special Conditions No. 25–379–SC]**

## Special Conditions: Dassault Falcon 2000 Series Airplanes; Aircell Airborne Satcom Equipment Consisting of a Wireless Handset and Associated Base Station, With Lithium Battery Installations

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

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Dassault Falcon 2000 series airplanes. These airplanes, as modified by Aircell LLC, will have a novel or unusual design feature associated with the Aircell airborne satcom equipment (ASE) which use lithium battery technology. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** *Effective Date:* May 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 15, 2007, Aircell LLC, applied for a type design change to an existing STC (ST01388WI–D), to install additional equipment on Dassault Falcon 2000 series airplanes. This installation adds components to the existing airplane installation to include a low power Wi-Fi handset containing a single cell lithium polymer rechargeable battery. The battery identified for application in this design is a low capacity, single cell lithium polymer rechargeable battery, with a nominal capacity of 1400mAh and a nominal voltage of 3.7V. The battery has a weight of 26.5 grams. The battery has been Underwriters Laboratories, Inc. (UL) tested and qualified by DO–160E in the Aircell handset (P12857). The design is supported by a System Safety Assessment/Functional Hazard Assessment (SSA/FHA) analysis. The Aircell Wi-Fi handset, which is a component of the Aircell ASE, consists of a wireless handset and associated base station (cradle and charging unit), both with protective circuits and fuse devices which provide multiple levels of redundant protection from hazards, such as overcharging or discharging. The lithium battery is installed in the handset.

A lithium battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on large transport category airplanes. The FAA is issuing these special conditions to require that (1) all characteristics of the lithium batteries and their installations that could affect safe operation of the Dassault Falcon 2000 are addressed, and (2) appropriate continued airworthiness instructions, which include maintenance requirements, are established to ensure the availability of electrical power from the batteries when needed. At present, there is limited experience with use of rechargeable lithium batteries in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging, over-discharging, and flammability of cell components.

*1. Overcharging*

In general, lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging that causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or

explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

*2. Over-Discharging*

Discharge of some types of lithium batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flightcrews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

*3. Flammability of Cell Components*

Unlike nickel-cadmium and lead-acid batteries, some types of lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

These problems experienced by users of lithium batteries raise concern about the use of these batteries in commercial aviation. Accordingly, the proposed use of lithium batteries in the Aircell ASE on Dassault Falcon 2000 series aircraft has prompted the FAA to review the adequacy of existing regulations in Title 14 Code of Federal Regulations (14 CFR) part 25. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium batteries that could affect the safety and reliability of lithium battery installations.

The intent of these special conditions is to establish appropriate airworthiness standards for lithium batteries in Dassault Falcon 2000 series aircraft, modified Aircell LLC., and to ensure, as required by § 25.601, that these battery installations are not hazardous or unreliable. Accordingly, these special conditions include the following requirements:

- Those provisions of § 25.1353 which are applicable to lithium batteries.
- The flammable fluid fire protection provisions of § 25.863.

In the past, this regulation was not applied to batteries of transport category airplanes, since the electrolytes used in lead-acid and nickel-cadmium batteries are not flammable.

- New requirements to address the hazards of overcharging and over-discharging that are unique to lithium batteries.
- New Instructions for Continuous Airworthiness that include maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge.

**Type Certification Basis**

Under the provisions of 14 CFR 21.101, Aircell LLC, must show that the Dassault Falcon 2000 series airplanes, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. Type Certificate A50NM, Revision 3, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The certification basis for Dassault Falcon 2000, is listed in Type Certificate A50NM, Revision 3, dated September 21, 2004. In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions. Also, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for Dassault Aviation Falcon 2000 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Falcon 2000 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the models for which they are issued. Should Aircell LLC. apply for a supplemental type certificate to modify any other model included on Type Certificate No. A50NM to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model.

**Novel or Unusual Design Features**

The Dassault Aviation Falcon 2000 series airplanes, as modified by Aircell LLC., to include the Aircell ASE which will use lithium battery technology, will incorporate a novel or unusual design feature. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

The Aircell Access system will include lithium battery installations. The application of a rechargeable lithium battery is a novel or unusual design feature in transport category airplanes. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on large transport category airplanes. The FAA issues these special conditions to require that (1) all characteristics of the lithium battery and its installation that could affect safe operation of the satellite communication system are addressed, and (2) appropriate maintenance requirements are established to ensure that electrical power is available from the batteries when it is needed.

**Discussion of Comments**

Notice of proposed special conditions No. 25–08–07–SC for the Dassault Falcon 2000 series airplanes was published in the **Federal Register** on November 20, 2008 (73 FR 70286). One comment was received from Dassault Falcon Jet Corporation.

Comment: Dassault requested that an additional safety requirement be added to the text of the special conditions as follows: ''Any equipment/system that embodies a lithium battery shall be designed so as to ensure that it can only be connected to its own dedicated charger which has been designed for such equipment/system. This is especially true when the equipment/system in question has a charger which is external to such equipment/system. In that case, the equipment/system must be designed in a way that it is not possible to connect it to a charger which is used for recharging other aircraft equipment and systems with a different battery type or brand or a different lithium technology.''

FAA Disposition: There are many ways to design equipment/systems that embody a lithium battery power storage system. The batteries could be either internal or external to the equipment/system. The charging system could be

built-in or external to the battery storage system. In addition to the equipment/system, the battery and the charging system could be self-contained and designed to comply with the special conditions. The FAA concurs that the system must be designed to ensure that the recharging function of the system ensures proper and safe recharging. However, the commenter's proposal is not practical. It would be onerous to require that no other system can be connected to the battery. The safety concern here is mitigated by the other requirements in the special conditions. In particular, the special conditions require that safe charging must be ensured (see Special Condition Nos. 1, 3, 7, and 9). Therefore, we believe the special conditions are adequate. Section 25.1301 also addresses this comment. The special conditions are issued as proposed.

**Applicability**

As discussed above, these special conditions are applicable to the Dassault Aviation 2000 series airplanes as modified by Aircell LLC. Should Aircell LLC apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

This action affects only certain novel or unusual design features of the Dassault Aviation 2000 series airplanes as modified by Aircell LLC. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation 2000 series airplanes, modified by Aircell LLC. in lieu of the requirements of § 25.1353(c)(1) through (c)(4), Amendment 25–113.

Lithium batteries and battery installations on Dassault Aviation 2000 series airplanes must be designed and installed as follows:

1. Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium battery installation must preclude explosion in the event of those failures.

2. Design of the lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

3. No explosive or toxic gases emitted by any lithium battery in normal operation or as the result of any failure of the battery charging system, monitoring system, or battery installation which is not shown to be extremely remote may accumulate in hazardous quantities within the airplane.

4. Installations of lithium batteries must meet the requirements of § 25.863(a) through (d).

5. No corrosive fluids or gases that may escape from any lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with § 25.1309(b) and applicable regulatory guidance.

6. Each lithium battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

7. Lithium battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and,

(a) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or

(b) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

8. Any lithium battery installation whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

9. The Instructions for Continued Airworthiness required by § 25.1529 must contain maintenance requirements to assure that the lithium battery is sufficiently charged at appropriate intervals specified by the battery manufacturer. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of lithium batteries in spares storage to prevent the replacement of batteries whose function is required for safe operation of the airplane with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge. Precautions should be included in the Instructions for Continued Airworthiness maintenance instructions to prevent mishandling of the lithium battery which could result in short-circuit or other unintentional damage that could result in personal injury or property damage.

**Note 1:** The term ''sufficiently charged'' means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where there is a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

**Note 2:** These special conditions are not intended to replace § 25.1353(c), Amendment 25–113 in the certification basis of the Aircell LLC. supplemental type certificate. These special conditions apply only to lithium batteries and their installations. The requirements of § 25.1353(c), Amendment 25–113 remain in effect for batteries and battery installations on the Aircell LLC. supplemental type certificate that do not use lithium batteries.

Compliance with the requirements of these special conditions must be shown by test or analysis, with the concurrence of the Fort Worth Special Certification Office.

Issued in Renton, Washington, on March 4, 2009.

**Linda Navarro,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–7899 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–1324; Directorate Identifier 2008–NM–101–AD; Amendment 39–15875; AD 2009–08–02]**

**RIN 2120–AA64**

# Airworthiness Directives; McDonnell Douglas Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–60F Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This AD requires revising the airplane flight manual to provide the flightcrew with procedures to preclude dry running of the fuel pumps. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent pump inlet friction (i.e., overheating or sparking) when the fuel pumps are continually run as the center wing fuel tank becomes empty, and/or electrical arc burnthrough, which could result in a fuel tank fire or explosion.

**DATES:** This AD is effective May 13, 2009.

**ADDRESSES:**

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all McDonnell Douglas Model DC–8–50 series airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–60 series airplanes; Model DC–8–60F series airplanes; Model DC–8–70 series airplanes; and Model DC–8–70F series airplanes. That NPRM was published in the **Federal Register** on December 23, 2008 (73 FR 78678). That NPRM proposed to require revising the airplane flight manual to provide the flightcrew with procedures to preclude dry running of the fuel pumps.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

### Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

### Costs of Compliance

We estimate that this AD will affect 156 airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $12,480, or $80 per product.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2009–08–02 McDonnell Douglas:** Amendment 39–15875. Docket No. FAA–2008–1324; Directorate Identifier 2008–NM–101–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective May 13, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

| Model |
|---|
| (1) DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes. |
| (2) DC–8F–54 and DC–8F–55 airplanes. |

TABLE 1—APPLICABILITY—Continued

| Model |
| --- |
| (3) DC–8–61, DC–8–62, and DC–8–63 airplanes. |
| (4) DC–8–61F, DC–8–62F, and DC–8–63F airplanes. |
| (5) DC–8–71, DC–8–72, and DC–8–73 airplanes. |
| (6) DC–8–71F, DC–8–72F, and DC–8–73F airplanes. |

**Unsafe Condition**

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent pump inlet friction (i.e., overheating or sparking) when the fuel pumps are continually run as the center wing fuel tank becomes empty, and/or electrical arc burnthrough, which could result in a fuel tank fire or explosion.

**Compliance**

(e) Comply with this AD within the compliance times specified, unless already done.

**Airplane Flight Manual (AFM) Revision**

(f) Within 14 days after the effective date of this AD, revise the Certificate Limitations Section of the Boeing DC–8 AFM to include the following procedures that preclude dry running of fuel pumps and/or electrical arc burnthrough (this may be done by inserting a copy of this AD into the AFM):

''During level flight, the applicable alternate or center wing auxiliary tank boost pump switch must be placed in the OFF position no more than 5 minutes after the auto fill light is continuously illuminated.

DO NOT reset any tripped fuel pump circuit breakers.''

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

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

**Material Incorporated by Reference**

(h) None.

Issued in Renton, Washington, on March 30, 2009.

**Steve Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–7791 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–1129; Airspace Docket No. 08–ANM–7]**

## Establishment of Class E Airspace; Ten Sleep, WY

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

**ACTION:** Final rule.

**SUMMARY:** This action will establish Class E airspace at Ten Sleep, WY. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Red Reflet Ranch Airport, Ten Sleep, WY. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Red Reflet Ranch Airport, Ten Sleep, WY.

**DATES:** *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### History

On February 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Ten Sleep, WY (74 FR 7204). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Ten Sleep, WY. Controlled airspace is necessary to accommodate IFR aircraft executing new RNAV (GPS) SIAPs at Red Reflet Ranch Airport, Ten Sleep, WY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Red Reflet Ranch Airport, Ten Sleep, WY.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace

Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM WY, E5 Ten Sleep, WY [New]**

Ten Sleep, Red Reflet Ranch Airport, WY (Lat. 43°58′04″ N., long. 107°22′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of the Red Reflet Ranch Airport, and within 4 miles each side of the Red Reflet Ranch Airport 293° bearing extending from the 6.6-mile radius to 12 miles northwest of the Red Reflet Ranch Airport.

* * * * *

Issued in Seattle, Washington, on March 31, 2009.

**Steve Karnes,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. E9–7900 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### 15 CFR Part 801

**[Docket No. 0807311000–9272–02 ]**

**RIN 0691–AA67**

## International Services Surveys: BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for a new mandatory survey entitled the BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions. The survey will collect from major U.S. credit card companies data on cross-border credit, debit, and charge card transactions between U.S. cardholders traveling abroad and foreign businesses and between foreign cardholders traveling in the United States and U.S. businesses. The BE–150 survey will be conducted on a quarterly basis beginning with the first quarter of 2009.

The BE–150 survey data will be used by BEA in estimating the travel component of the U.S. International Transactions Accounts (ITAs). In constructing the estimates, these data will be used in conjunction with data BEA is collecting separately from U.S. and foreign travelers on the Survey of International Travel Expenditures on the methods these travelers used to pay for their international travel, such as credit, debit, and charge card purchases, cash withdrawals, currency brought from home, and travelers' checks.

**DATES:** This final rule will be effective May 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Chris Emond, Chief, Special Surveys Branch, (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail *christopher.emond@bea.gov*; or phone (202) 606–9826.

**SUPPLEMENTARY INFORMATION:** In the September 18, 2008 **Federal Register,** 73 FR 54095, BEA published a notice of proposed rulemaking to amend 15 CFR 801.9 to set forth reporting requirements for a new mandatory survey entitled BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions. No comments were received on the proposed rule. Thus, the proposed rule is adopted without change.

### Description of Changes

The BE–150 survey is a mandatory survey and will be conducted, beginning with transactions for the first quarter of 2009, by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' For the initial quarter of coverage, BEA will send the survey to potential respondents in April of 2009; responses will be due by May 30, 2009.

The BE–150 survey will collect from the U.S. credit card companies data covering cross-border credit, debit, and charge card transactions between U.S. cardholders traveling abroad and foreign businesses and between foreign cardholders traveling in the United States and U.S. businesses—by country of the transaction (for U.S. cardholders) or by country of residency of the cardholder (for foreign cardholders). Credit card companies that operate networks used to clear and settle credit card transactions between issuing banks and acquiring banks would be responsible for reporting on this survey. Issuing banks, acquiring banks, and individual cardholders will not be required to report. Data will be collected by the type of transaction, by type of card, by spending category, and by country. Data on credit card transactions of U.S. cardholders traveling abroad and foreign cardholders traveling in the United States will be collected at an aggregate level from the U.S. credit card companies; data on the transactions of individuals will not be collected.

### Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA.

The survey provides a basis for compiling the travel account of the United States international transactions accounts. In constructing the estimates, these data will be used in conjunction with data BEA is collecting separately from U.S. and foreign travelers on the Survey of International Travel Expenditures on the methods these travelers used to pay for international travel expenditures. With the two data sources, BEA will be able to estimate total expenditures by foreign travelers in the United States (U.S. exports) and total expenditures by U.S. travelers abroad (U.S. imports) by country and region.

### Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

### Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federal assessment under E.O. 13132.

### Paperwork Reduction Act

The collection-of-information in this final rule has been approved by the Office of Management and Budget (OMB) under control number 0608–0072 pursuant to the requirements of the Paperwork Reduction Act.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number. The collection will display this number.

The BE–150 quarterly survey is expected to result in the filing of reports from four respondents on a quarterly basis, or 16 reports annually. The respondent burden for this collection of information will vary from one respondent to another, but is estimated to average 16 hours per response (64 hours annually), including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for the BE–150 survey is estimated at 260 hours.

Written comments regarding the burden-hour estimate or any other aspect of this collection of information contained in this final rule should be sent to (1) the Bureau of Economic Analysis via mail to U.S. Department of Commerce, Bureau of Economic Analysis, Chris Emond, Chief, Special Surveys Branch (BE–50), Washington, DC 20230, via e-mail at *christopher.emond@bea.gov*, or by FAX at 202–606–5318; and (2) the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov*, or by FAX at 202–395–7245.

**Regulatory Flexibility Act**

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this rule. As a result, no final regulatory flexibility analysis was prepared.

**List of Subjects in 15 CFR Part 801**

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements, Travel expenses, Cross-border transactions, Credit card, and Debit card.

Dated: January 29, 2009.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

## PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p. 86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

■ 2. Amend § 801.9 by adding paragraph (c)(7) to read as follows:

**§ 801.9 Reports required.**

(c) *Quarterly surveys.* * * *

(7) BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions:

(i) A BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions will be conducted covering the first quarter of the 2009 calendar year and every quarter thereafter.

(A) *Who must report.* A BE–150 report is required from each U.S. company that operates networks for clearing and settling credit card transactions made by U.S. cardholders in foreign countries and by foreign cardholders in the United States. Each reporting company must complete all applicable parts of the BE–150 form before transmitting it to BEA. Issuing banks, acquiring banks, and individual cardholders are not required to report.

(B) *Covered Transactions.* The BE–150 survey collects aggregate information on the use of credit, debit, and charge cards by U.S. cardholders when traveling abroad and foreign cardholders when traveling in the United States. Data are collected by the type of transaction, by type of card, by spending category, and by country.

(ii) [Reserved]

[FR Doc. E9–7987 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF STATE

### 22 CFR Part 62

**[Public Notice: 6566]**

**RIN 1400–AC48**

### Exchange Visitor Program—Au Pairs

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** On June 19, 2008, the Department of State published an interim final rule to revise existing regulations and thereby permit qualified au pairs to participate again in the au pair program after completing a period of at least two years of residency outside the United States following the end date of his or her initial exchange visitor program. The regulations contained in the interim final rule are adopted without change.

**DATES:** The interim rule published at 73 FR 34861, June 19, 2008 is adopted as final without change effective April 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stanley S. Colvin, Deputy Assistant Secretary, Office of Private Sector Exchange, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at *jexchanges@state.gov*.

**SUPPLEMENTARY INFORMATION:** On June 19, 2008, the Department of State published an interim final rule with request for comments whether to allow a foreign national who previously participated in the au pair program to repeat the program. One comment was received in response to the document that had no relevance to the rule. The Department has determined that an au pair who has successfully completed the au pair program may repeat program participation provided that he or she has resided outside the United States for a period of at least two years after the completion of initial participation in the au pair program (including the educational component requirement) and is within the regulatory age range for eligibility. An au pair who has previously participated is likely to be more familiar with the American culture (thereby quickly overcoming cultural challenges), is a proven successful caretaker, and will be able to build on the skills previously acquired.

For the foregoing reasons, the Department is promulgating the interim final rule as a final rule.

**Regulatory Analysis**

*Administrative Procedure Act*

The Department has determined that this final rule involves a foreign affairs function of the United States and is consequently exempt from the procedures required by 5 U.S.C. 553, pursuant to 5 U.S.C. 553(a)(1).

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule has been found not to be a major rule within the meaning of the

Small Business Regulatory Enforcement Fairness Act of 1996.

*Regulatory Flexibility Act/Executive Order 13272: Small Business*

Since this rulemaking is exempt from 5 U.S.C. 553, and no other law requires the Department to give notice of proposed rulemaking, this rulemaking also is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272, section 3(b).

*Executive Order 12866, as Amended*

The Department of State does not consider this final rule to be a ''significant regulatory action'' under Executive Order 12866, as amended, § 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive order.

*Executive Order 12988*

The Department has reviewed this final rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This final rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

*Executive Orders 12372 and 13132*

This Final Rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

*Paperwork Reduction Act*

This Final Rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 62**

Cultural exchange programs, Reporting and recordkeeping requirements.

## PART 62—EXCHANGE VISITOR PROGRAM

■ Accordingly the interim rule amending 22 CFR part 62 which was published at 73 FR 34861 on June 19, 2008 is adopted as final without change.

Dated: March 30, 2009.

**Stanley S. Colvin,**

*Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–7674 Filed 4–7–09; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2008–0189]**

**RIN 1625–AA00**

## Safety Zones; Fireworks Displays Within the Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing 73 permanent safety zones for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within these zones during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

**DATES:** This rule is effective May 8, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0189 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0189 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Fifth Coast Guard District, Prevention Division, 431 Crawford Street, Portsmouth, VA 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, Inspections and Investigations Branch, at (757) 398–6204. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On April 15, 2008, we published a notice of proposed rulemaking (NPRM) entitled, Safety Zones; Fireworks Displays within the Fifth Coast Guard District in the **Federal Register** (73 FR 20223). On November 14, 2008, we published a Supplemental notice of proposed rulemaking (SNPRM) entitled Safety Zones; Fireworks Displays within the Fifth Coast Guard District in the **Federal Register** (73 FR 67444). We received two comments on the NPRM. No public meeting was requested, and none was held.

### Background and Purpose

In this rule, the Coast Guard revises the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. For a description of the geographical area of the Fifth District and subordinate Coast Guard Sectors—Captain of the Port Zones, please see 33 CFR 3.25. Currently there are 49 permanent safety zones established for fireworks displays occurring throughout the year that are held on an annual basis and normally in one of these 49 locations.

The Coast Guard revision of the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays, adds 24 new locations and modifies five previously established locations within the geographic

boundary of the Fifth Coast Guard District. This rule increases the total number of permanent safety zones to 73 locations for fireworks displays within the boundary of the Fifth Coast Guard District.

This rule adds 24 new safety zone locations to the permanent safety zones listed in 33 CFR 165.506. The new safety zones are listed in the following table.

Table of Newly Established Fireworks Safety Zones

1. Delaware River, Chester, PA
2. North Atlantic Ocean Avalon, NJ
3. Barnegat Bay, Barnegat Township, NJ
4. North Atlantic Ocean, Cape May, NJ
5. Great Egg Harbor Inlet, Margate City, NJ
6. Metedeconk River, Brick Township, NJ
7. North Atlantic Ocean, Ocean City, NJ
8. North Atlantic Ocean, Bethany Beach, DE
9. Baltimore Inner Harbor, Patapsco River, MD
10. Anacostia River, Washington, D.C.
11. Potomac River, Charles County, MD
12. Potomac River, National Harbor, MD
13. Patuxent River, Calvert County, MD
14. Patuxent River, Solomons Island, Calvert County, MD
15. Appomattox River, Hopewell, VA
16. John H. Kerr Reservoir, Clarksville, VA
17. Chesapeake Bay, Hampton, VA
18. Atlantic Ocean, Virginia Beach, VA, Safety Zone. B
19. Atlantic Ocean, Virginia Beach, VA, Safety Zone. C
20. Nansemond River, Suffolk, VA
21. James River, Williamsburg, VA
22. Edenton Bay, Edenton, NC
23. Motts Channel, Banks Channel, Wrightsville Beach, NC
24. New River, Jacksonville, NC

This rule modifies five previously established safety zones at the following locations: Potomac River, Charles County, MD; Northwest Harbor (West Channel) Patapsco River, MD; Delaware River, Essington, PA; Atlantic Ocean, Virginia Beach, VA, safety zone A; and Cape Fear River, Wilmington, NC.

The Coast Guard typically receives numerous applications in these areas for fireworks displays. Previously a temporary safety zone was usually established on an emergency basis for each display. This limited the opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provides the public the opportunity to comment on the zone locations, size and length of time the zones will be enforced.

Each year organizations within the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow persons within the safety zone if conditions permit.

The Coast Guard will publish notices in the **Federal Register** if an event sponsor reports a change to the listed event venue or date. In the case of inclement weather the event usually will be conducted on the day following the date listed in the Table to § 165.506. Coast Guard Captains of the Port will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, 24 to 48 hours before the event is scheduled to begin, to notify the public. The public will also be notified about many of the listed marine events by local newspapers, radio and television stations. The various methods of notification provided by the Coast Guard and local community media outlets will facilitate informing mariners so they can adjust their plans accordingly.

Fireworks barges or launch sites on land used in the locations stated in this rulemaking shall display a sign. The sign will be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water labeled ''FIREWORKS—DANGER—STAY AWAY''. This will provide on scene notice that the safety zone is, or will, be enforced on that day. This notice will consist of a diamond shaped sign, 4 foot by 4 foot, with a 3-inch orange retro-reflective border. The word ''DANGER'' shall be 10 inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 30 minutes after its completion to enforce the safety zone.

The enforcement period for these safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23.

This rule is necessary to protect the safety of life and property on navigable waters during these fireworks events and provides the marine community information on safety zone locations, size, and length of time the zones will be active.

**Discussion of Comments and Changes**

The Coast Guard received two comments in response to the NPRM which were addressed in the SNPRM published in the **Federal Register**. The first comment, from the North Carolina Department of Environment and Natural Resources, Division of Coastal Management letter of December 2, 2008 addressed a revision to the Cape Fear River safety zone. Specifically, the New Hanover County, NC Fire Rescue expressed concern that the safety zone, as proposed for Cape Fear River, did not meet the county's fire code. The Coast Guard submitted a revised fireworks safety zone for the Cape Fear River location that was subsequently approved by New Hanover County and Fire Rescue. This change is included in this rule.

The second comment was submitted by the Virginia Department of Environmental Quality, Federal Consistency Coordinator. They suggested that the Atlantic Ocean, Virginia Beach Safety zone be relocated northward of the 14th street Fishing Pier into the vicinity of 17th street. The change was made in this final rule.

Lastly, the Coast Guard revised the safety zone for (b.)24, Anacostia River, Washington, DC. The safety zone was moved approximately 500 yards southeast of the shoreline near Washington Nationals Ball Park to accommodate a barge launch platform. This change was made in the interest of enhancing safety by increasing the pyrotechnic fallout area over the Anacostia River.

The Coast Guard is establishing 73 safety zones on the specified waters listed within the Table to § 165.506.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the short amount of time that vessels would be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the safety zones. Advance notifications would also be made to the local maritime community by issuing Local Notice to Mariners, Marine information and facsimile broadcasts so mariners may adjust their plans accordingly. Notifications to the public for most events will usually be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these safety zones will only be enforced two to three times per year.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the established safety zones during the times these zones are enforced.

This rule will impact mariners desiring to transit the area identified as a safety zone during the times identified within this final rule. The safety zones identified in this final rule will not have a significant economic impact on a substantial number of small entities for the following reasons: The enforcement period will be short in duration, and in many of the zones vessels will be able to transit safely around the safety zones. Further, those seeking permission to enter the zone may contact the appropriate Captain of the Port or designated Coast Guard patrol personnel on scene to gain entry into the zone. Lastly, before the enforcement period, we will issue maritime advisories widely so as to allow mariners to plan accordingly.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM and in the SNPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish 73 safety zones.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 3306, 3703 and Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.506 to read as follows:

**§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.**

(a) *Regulations.* The following regulations apply to the fireworks safety zones listed in the Table to § 165.506.

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) These regulations will be enforced annually, for the duration of each fireworks event listed in the Table to § 165.506. In the case of inclement weather the event may be conducted on the day following the date listed in the Table to § 165.506. Annual notice of the exact dates and times of the enforcement period of the regulation with respect to each safety zone, the geographical area, and other details concerning the nature of the fireworks event will be published in Local Notices to Mariners and transmitted via Broadcast Notice to Mariners over VHF–FM marine band radio.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. Those personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(b) *Notification.* (1) Fireworks barges and launch sites on land that operate within the regulated areas contained in the Table to § 165.506 will have a sign affixed to the port and starboard side of the barge, or mounted on a post 3 feet above ground level when on land immediately adjacent to the shoreline and facing the water labeled ''FIREWORKS—DANGER—STAY AWAY''. This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 feet by 4 feet with a 3-inch orange retro reflective border. The word ''DANGER'' shall be 10-inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6-inch black block letters placed above and below the word ''DANGER'' respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to effect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The public may also be notified about many of the listed marine events by local newspapers, radio and television stations. The various methods of notification provided by the Coast Guard and local community media outlets will facilitate informing mariners so they can adjust their plans accordingly.

(c) *Contact Information.* Questions about safety zones and related events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Atlantic Beach, North Carolina: (252) 247–4545.

(d) *Enforcement Period.* The safety zones in the Table to § 165.506 will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a ''FIREWORKS—DANGER—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—DANGER—STAY AWAY'' sign is posted on land adjacent to the shoreline, in a location listed in the Table to § 165.506. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Date | Location | Regulated area |
|---|---|---|---|
| **(a.) Coast Guard Sector Delaware Bay—COTP Zone** | | | |
| 1 | July 4th | North Atlantic Ocean, Bethany Beach, DE, Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks launch platform in approximate position latitude 38°32′08'' N, longitude 075°03′15″ W, adjacent to shoreline of Bethany Beach, DE. |
| 2 | Labor Day | Indian River Bay, DE, Safety Zone. | All waters of the Indian River Bay within a 360 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N, longitude 075°08′18″ W, about 700 yards east of Pots Net Point, DE. |
| 3 | July 4th | Atlantic Ocean, Rehoboth Beach, DE, Safety Zone. | All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N, longitude 075°04′21″ W, approximately 400 yards east of Rehoboth Beach, DE. |
| 4 | July 4th | North Atlantic Ocean, Avalon, NJ, Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°05′31″ N, longitude 074°43′00″ W, in the vicinity of the shoreline at Avalon, NJ. |
| 5 | July 4th, September—2nd Saturday. | Barnegat Bay, Barnegat Township, NJ, Safety Zone. | The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ. |
| 6 | July 4th | North Atlantic Ocean, Cape May, NJ, Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ. |
| 7 | July 3rd | Delaware Bay, North Cape May, NJ, Safety Zone. | All waters of the Delaware Bay within a 500 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N, longitude 074°58′30″ W. |
| 8 | August—3rd Sunday | Great Egg Harbor Inlet, Margate City, NJ, Safety Zone. | All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ. |
| 9 | July 4th, August every Thursday, September 1st Thursday. | Metedeconk River, Brick Township, NJ, Safety Zone. | The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, near the shoreline at Brick Township, NJ. |
| 10 | July 4th | North Atlantic Ocean, Ocean City, NJ, Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ. |
| 11 | May—4th Saturday | Barnegat Bay, Ocean Township, NJ, Safety Zone. | All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N, longitude 074°10′46″ W. |
| 12 | July 4th | Little Egg Harbor, Parker Island, NJ, Safety Zone. | All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N, longitude 074°14′43″ W, approximately 100 yards north of Parkers Island. |
| 13 | September—3rd Saturday | Delaware River, Chester, PA, Safety Zone. | All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yards radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N, longitude 075°22′42″ W. |
| 14 | September—3rd Saturday | Delaware River, Essington, PA, Safety Zone. | All the waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yards radius of the fireworks barge located in the approximate position latitude 39°51′18″ N, longitude 075°18′57″ W. |
| 15 | July 4th, Columbus Day, December 31st, January 1st. | Delaware River, Philadelphia, PA, Safety Zone. | All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N, longitude 075°08′28.1″ W; thence to latitude 39°56′29.1″ N, longitude 075°07′56.5″ W, and bounded on the north by the Benjamin Franklin Bridge. |
| **(b.) Coast Guard Sector Baltimore—COTP Zone** | | | |
| 1 | April—1st or 2nd Saturday | Washington Channel, Upper Potomac River, Washington, DC, Safety Zone. | All waters of the Upper Potomac River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′09″ N, longitude 077°01′13″ W, located within the Washington Channel in Washington Harbor, DC. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Date | Location | Regulated area |
|---|---|---|---|
| 2 ..... | July 4th, December—1st and 2nd, Saturday, December 31st. | Severn River and Spa Creek, Annapolis, MD, Safety Zone. | All waters of the Severn River and Spa Creek within an area bounded by a line drawn from latitude 38°58′39.6″ N, longitude 076°28′49″ W; thence to latitude 38°58′41″ N, longitude 076°28′14″ W; thence to latitude 38°59′01″ N, longitude 076°28′37″ W; thence to latitude 38°58′57″ N, longitude 076°28′40″ W, located near the entrance to Spa Creek in Annapolis, Maryland. |
| 3 ..... | Saturday before Independence Day holiday. | Middle River, Baltimore County, MD, Safety Zone. | All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N, longitude 076°23′49″ W, approximately 300 yards east of Rockaway Beach, near Turkey Point. |
| 4 ..... | July 4th, December 31st ..... | Patapsco River (Middle Branch), Baltimore, MD, Safety Zone. | All waters of the Patapsco River, Middle Branch, within an area bound by a line drawn from the following points: latitude 39°15′22″ N, longitude 076°36′36″ W; thence to latitude 39°15′10″ N, longitude 076°36′00″ W; thence to latitude 39°15′40″ N, longitude 076°35′23″ W; thence to latitude 39°15′49″ N, longitude 076°35′47″ W; thence to the point of origin, located approximately 600 yards east of Hanover Street (SR–2) Bridge. |
| 5 ..... | June 14th, July 4th, September—2nd Saturday, December 31st. | Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone. | All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N, 076°34′35″ W, located adjacent to the East Channel of Northwest Harbor. |
| 6 ..... | May—3rd Friday, July 4th, December 31st. | Baltimore Inner Harbor, Patapsco River, MD, Safety Zone. | All waters of the Patapsco River within a 150 yard radius of the fireworks barge in approximate position latitude 39°16′55″ N, longitude 076°36′17″ W, located at the entrance to Baltimore Inner Harbor, approximately 150 yards southwest of pier 6. |
| 7 ..... | May—3rd Friday, July 4th, December 31st. | Baltimore Inner Harbor, Patapsco River, MD, Safety Zone. | The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′03″ N, longitude 076°36′36″ W, located in Baltimore Inner Harbor, approximately 150 yards southeast of pier 1. |
| 8 ..... | July 4th, December 31st ..... | Northwest Harbor (West Channel) Patapsco River, MD, Safety Zone. | All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N, longitude 076°34′38″ W, located adjacent to the West Channel of Northwest Harbor. |
| 9 ..... | July 4th ..... | Patuxent River, Calvert County, MD, Safety Zone. | All waters of the Patuxent River within a 280 yard radius of the fireworks barge in approximate position latitude 38°19′06.6″ N, longitude 076°26′10.1″ W, approximately 1450 yards west of Drum Point, MD. |
| 10 ..... | July 4th ..... | Patuxent River, Solomons Island, Calvert County, MD, Safety Zone. | All waters of the Patuxent River within a 400 yard radius of the fireworks barge located at latitude 38°19′03″ N, longitude 076°26′07.6″ W. |
| 11 ..... | July 4th ..... | Patuxent River, Solomons Island, MD, Safety Zone. | All waters of Patuxent River within a 300 yard radius of the fireworks barge in an area bound by the following points: latitude 38°19′42″ N, longitude 076°28′02″ W; thence to latitude 38°19′26″ N, longitude 076°28′18″ W; thence to latitude 38°18′48″ N, longitude 076°27′42″ W; thence to latitude 38°19′06″ N, longitude 076°27′25″ W; thence to the point of origin, located near Solomons Island, MD. |
| 12 ..... | July 4th ..... | Chester River, Kent Island Narrows, MD, Safety Zone. | All waters of the Chester River, within an area bound by a line drawn from the following points: latitude 38°58′50″ N, longitude 076°15′00″ W; thence north to latitude 38°59′00″ N, longitude 076°15′00″ W; thence east to latitude 38°59′00″ N, longitude 076°14′46″ W; thence southeast to latitude 38°58′50″ N, longitude 076°14′28″ W; thence southwest to latitude 38°58′37″ N, longitude 076°14′36″ W, thence northwest to latitude 38°58′42″ N, longitude 076°14′55″ W, thence to the point of origin, located approximately 900 yards north of Kent Island Narrows (US–50/301) Bridge. |
| 13 ..... | July 3rd ..... | Chesapeake Bay, Chesapeake Beach, MD, Safety Zone. | All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′33″ N, longitude 076°31′48″ W, located near Chesapeake Beach, Maryland. |
| 14 ..... | July 4th ..... | Choptank River, Cambridge, MD, Safety Zone. | All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N, longitude 076°04′46″ W. |
| 15 ..... | July—2nd and last Saturday ..... | Potomac River, Charles County, MD, Safety Zone. | All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°20′18″ N, longitude 077°15′00″ W, approximately 700 yards north of the shoreline at Fairview Beach, Virginia. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Date | Location | Regulated area |
|---|---|---|---|
| 16 ..... | May—last Saturday, July 4th .... | Potomac River, Charles County, MD—Mount Vernon, Safety Zone. | All waters of the Potomac River within a 300 yard radius of the fireworks launch site near the Mount Vernon Estate, in Fairfax County, Virginia, located at latitude 38°42′24″ N, longitude 077°04′56″ W. |
| 17 ..... | October—1st Saturday ..... | Dukeharts Channel, Potomac River, MD, Safety Zone. | All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′48″ N, longitude 076°44′37″ W, located adjacent to Dukeharts Channel near Coltons Point, Maryland. |
| 18 ..... | July—Day before Independence Day holiday, November—last Friday. | Potomac River, National Harbor, MD, Safety Zone. | All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′18″ N, longitude 077°01′01″ W; thence to latitude 38°47′11″ N, longitude 077°01′26″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland. |
| 19 ..... | July 4th, September—last Saturday. | Susquehanna River, Havre de Grace, MD, Safety Zone. | All waters of the Susquehanna River within a 150 yard radius of the fireworks barge in approximate position latitude 39°32′42″ N, longitude 076°04′30″ W, approximately 800 yards east of the waterfront at Havre de Grace, MD. |
| 20 ..... | June and July—Saturday before Independence Day holiday. | Miles River, St. Michaels, MD, Safety Zone. | All waters of the Miles River within a 200 yard radius of the fireworks barge in approximate position latitude 38°47′42″ N, longitude 076°12′23″ W, located near the waterfront of St. Michaels, Maryland. |
| 21 ..... | June and July—Saturday or Sunday before Independence Day holiday. | Tred Avon River, Oxford, MD, Safety Zone. | All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′48″ N, longitude 076°10′38″ W, approximately 500 yards northwest of the waterfront at Oxford, MD. |
| 22 ..... | July 3rd ..... | Northeast River, North East, MD, Safety Zone. | All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N, longitude 075°57′00″ W, approximately 400 yards south of North East Community Park. |
| 23 ..... | June—2nd or 3rd Saturday, July—1st or 2nd Saturday, September—1st or 2nd Saturday. | Upper Potomac River, Alexandria, VA, Safety Zone. | All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′37″ N, 077°02′02″ W, located near the waterfront of Alexandria, Virginia. |
| 24 ..... | March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park. | Anacostia River, Washington, DC, Safety Zone. | All waters of the Anacostia River, within a 350 yard radius of the fireworks barge in approximate position 38°52′16″ N, 077°00′13″ W, approximately 500 yards southeast of the shoreline near Washington Nationals Ball Park. |
| 25 ..... | June—last Saturday ..... | Potomac River, Prince William County, VA, Safety Zone. | All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′08″ N, longitude 077°15′34″ W, located near Cherry Hill, Virginia. |
| **(c.) Coast Guard Sector Hampton Roads—COTP Zone** | | | |
| 1 ..... | July 4th ..... | Atlantic Ocean, Ocean City, MD, Safety Zone. | All waters of the Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N, longitude 075°05′03.2″ W; thence to latitude 38°19′36.7″ N, longitude 075°04′53.5″ W; thence to latitude 38°19′45.6″ N, longitude 075°04′49.3″ W; thence to latitude 38°19′49.1″ N, longitude 075°05′00.5″ W; thence to point of origin. The size of the proposed zone extends approximately 300 yards offshore from the fireworks launch area located at the High Water mark on the beach. |
| 2 ..... | May—4th Sunday, June—3rd Monday, June 29th and July 4th, August—1st and 4th Sunday, August 6th, September—1st and 4th Sunday. | Isle of Wight Bay, Ocean City, MD, Safety Zone. | All waters of Isle of Wight Bay within a 350 yard radius of the fireworks barge in approximate position latitude 38°22′32″ N, longitude 075°04′30″ W. |
| 3 ..... | July 4th ..... | Assawoman Bay, Fenwick Island—Ocean City, MD, Safety Zone. | All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′57.6″ N, longitude 075°03′55.8″ W. |
| 4 ..... | July 4th ..... | Broad Bay, Virginia Beach, VA, Safety Zone. | All waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′08″ N, longitude 076°00′46″ W, located on the shoreline near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia. |
| 5 ..... | October—1st Friday ..... | York River, West Point, VA, Safety Zone. | All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N, longitude 076°47′19″ W. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Date | Location | Regulated area |
|---|---|---|---|
| 6 | July 4th | York River, Yorktown, VA, Safety Zone. | All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N, longitude 076°30′02″ W, located near Yorktown, Virginia. |
| 7 | July 4th | Chincoteague Channel, Chincoteague, VA, Safety Zone. | All waters of the Chincoteague Channel within a 360 yard radius of the fireworks launch location at the Chincoteague carnival waterfront in approximate position latitude 37°55′40.3″ N, longitude 075°23′10.7″ W, approximately 900 yards southwest of Chincoteague Swing Bridge. |
| 8 | May—1st Friday, July 4th | James River, Newport News, VA, Safety Zone. | All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N, longitude 076°26′19″ W, located in the vicinity of the Newport News Shipyard, Newport News, Virginia. |
| 9 | July 9th | Chesapeake Bay, Hampton, VA, Safety Zone. | All waters of the Chesapeake Bay within a 350 yard radius of approximate position latitude 37°02′23″ N, longitude 076°17′22″ W, located near Buckroe Beach. |
| 10 | June—4th Friday | Chesapeake Bay, Norfolk, VA, Safety Zone. | All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N, longitude 076°15′00″ W, located near Ocean View Fishing Pier. |
| 11 | July 4th | Chesapeake Bay, Virginia Beach, VA, Safety Zone. | All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N, longitude 076°03′27″ W, located at the First Landing State Park at Virginia Beach, Virginia. |
| 12 | Memorial Day, June—1st and 2nd Friday, Saturday and Sunday, July 4th, November—4th Saturday, December—1st Saturday and December 31st, January—1st. | Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone. | All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N, longitude 076°18′10.7″ W; thence to latitude 36°51′7.9″ N, longitude 076°18′01″ W; thence to latitude 36°50′45.6″ N, longitude 076°17′44.2″ W; thence to latitude 36°50′29.6″ N, longitude 076°17′23.2″ W; thence to latitude 36°50′7.7″ N, longitude 076°17′32.3″ W; thence to latitude 36°49′58″ N, longitude 076°17′28.6″ W; thence to latitude 36°49′52.6″ N, longitude 076°17′43.8″ W; thence to latitude 36°50′27.2″ N, longitude 076°17′45.3″ W thence to the point of origin. |
| 13 | May—2nd Saturday, September—1st Saturday and Sunday, December—1st Saturday. | Appomattox River, Hopewell, VA, Safety Zone. | All waters of the Appomattox River within a 400 yard radius of the fireworks barge in approximate position latitude 37°19′11″ N, longitude 077°16′55″ W. |
| 14 | July—3rd Saturday | John H. Kerr Reservoir, Clarksville, VA, Safety Zone. | All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N, longitude 078°32′50″ W, located near the south end of the State Route 15 Highway Bridge. |
| 15 | May, June, July, August, September, October—every Wednesday, Friday, Saturday and Sunday, July 4th. | Atlantic Ocean, Virginia Beach, VA, Safety Zone. A. | All waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N, longitude 075°58′06″ W, located off the beach between 17th and 31st streets. |
| 16 | September—4th Saturday | Atlantic Ocean, VA Beach, VA, Safety Zone. B. | All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N, longitude 075°58′09″ W, located on the 14th Street Fishing Pier. |
| 17 | August—4th Friday and Saturday. | Atlantic Ocean, VA Beach, VA, Safety Zone. C. | All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N, longitude 075°58′00″ W, located off the beach between 2nd and 6th streets. |
| 18 | July 4th | Nansemond River, Suffolk, VA, Safety Zone. | All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N, longitude 076°34′42″ W, located near Constant's Wharf in Suffolk, VA. |
| 19 | February—4th Saturday, July 4th. | Chickahominy River, Williamsburg, VA, Safety Zone. | All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N, longitude 076°52′17″ W, near Barrets Point, Virginia. |
| 20 | July 4th | James River, Williamsburg, VA, Safety Zone. | All waters of the James River within a 350 yard radius of approximate position latitude 37°13′23.3″ N, longitude 076°40′11.8″ W, located near Kingsmill Resort. |
| | | **(d.) Coast Guard Sector North Carolina—COTP Zone** | |
| 1 | July 4th, October—1st Friday | Morehead City Harbor Channel, NC, Safety Zone. | All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N, longitude 076°42′59.6″ W, a position located at the west end of Sugar Loaf Island, NC. |

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Date | Location | Regulated area |
|---|---|---|---|
| 2 | April—2nd Saturday, July 4th, August—3rd Monday, October—1st Friday. | Cape Fear River, Wilmington, NC, Safety Zone. | All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N, longitude 077°57′06″ W; thence northeast to latitude 34°13′57″ N, longitude 077°57′05″ W; thence north to latitude 34°14′11″ N, longitude 077°57′07″ W; thence northwest to latitude 34°14′22″ N, longitude 077°57′19″ W; thence west to latitude 34°14′22″ N, longitude 077°57′06″ W; thence southeast to latitude 34°14′07″ N, longitude 077°57′00″ W; thence south to latitude 34°13′54″ N, longitude 077°56′58″ W; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge. |
| 3 | July 4th | Green Creek and Smith Creek, Oriental, NC, Safety Zone. | All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N, longitude 076°42′10.4″ W, located near the entrance to the Neuse River in the vicinity of Oriental, NC. |
| 4 | July 4th | Pasquotank River, Elizabeth City, NC, Safety Zone. | All waters of the Pasquotank River within a 300 yard radius of the fireworks launch site in approximate position latitude 36°18′00″ N, longitude 076°13′00″ W, approximately 200 yards south of the east end of the Elizabeth City Bascule Bridges. |
| 5 | July 4th | Currituck Sound, Corolla, NC, Safety Zone. | All waters of the Currituck Sound within a 300 yard radius of the fireworks barge in approximate position latitude 36°22′48″ N, longitude 075°51′15″ W. |
| 6 | July 4th, November—3rd Saturday. | Middle Sound, Figure Eight Island, NC, Safety Zone. | All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to a position located at latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at position latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to position latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin. |
| 7 | June—2nd Saturday, July—1st Saturday after July 4th. | Pamlico River, Washington, NC, Safety Zone. | All waters of the Pamlico River that fall within a 300 yard radius of the fireworks launch site at latitude 35°32′19″ N, longitude 077°03′20.5″ W, located 500 yards north of Washington railroad trestle bridge. |
| 8 | July 4th | Neuse River, New Bern, NC, Safety Zone. | All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N, longitude 077°01′35.8″ W, located 420 yards north of the New Bern, Twin Span, high rise bridge. |
| 9 | July 4th | Edenton Bay, Edenton, NC, Safety Zone. | All waters within a 300 yard radius of position latitude 36°03′04″ N, longitude 076°36′18″ W, approximately 150 yards east of the entrance to Queen Anne Creek, Edenton, NC. |
| 10 | July 4th, November—4th Monday. | Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone. | All waters of Motts Channel within a 300 yard radius of the fireworks barge in approximate position latitude 34°12′29″ N, longitude 077°48′27″ W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC. |
| 11 | July 4th | Cape Fear River, Southport, NC, Safety Zone. | All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N, longitude 078°01′18″ W, approximately 700 yards south of the waterfront at Southport, NC. |
| 12 | July 4th | Big Foot Slough, Ocracoke, NC, Safety Zone. | All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N, longitude 075°59′24″ W, approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC. |
| 13 | August—1st Tuesday | New River, Jacksonville, NC, Safety Zone. | All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N, longitude 077°26′18″ W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina. |

Dated: February 19, 2009.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. E9–7885 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2008–0752]**

**RIN 1625–AA87**

## Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a security zone encompassing the navigable waters of the West Basin, Port Canaveral Harbor, Cape Canaveral, Florida. This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during Maritime Security (MARSEC) Levels 2 and 3 or when there is a specific credible threat during MARSEC Level 1. This security zone will remain activated until the departure of all cruise ships from the West Basin.

**DATES:** This rule is effective May 8, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0752 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0752 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Coast Guard Sector Jacksonville Prevention Department, 4200 Ocean Street, Atlantic Beach, Florida 32233, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Lieutenant Commander Mark Gibbs at Coast Guard Sector Jacksonville Prevention Department, Florida. Contact telephone is (904) 564–7563. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On October 20, 2008, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, Florida in the **Federal Register** (73 FR 62235). We received three letters commenting on the rule. No public meeting was requested, and none was held.

### Background and Purpose

The September 11, 2001, terrorist attacks on the World Trade Center complex in New York and the Pentagon in Arlington, Virginia, proved the devastating effects of subversive activity on U.S. critical infrastructure. Since that time, the Coast Guard has been taking action to ensure the security of maritime critical infrastructure and key resources throughout the country.

Subversive activity towards cruise ships and their associated passengers and crew is of paramount concern to the Coast Guard. Therefore, in order to strengthen security and further control access to the West Basin, the Captain of the Port Jacksonville has decided, after consultation with the Northeast and Eastern Central Florida Area Maritime Security Committee and in cooperation with the Canaveral Port Authority, to implement a security zone encompassing the West Basin. This security zone is only enforceable during MARSEC Levels 2 and 3 or when there is a specified credible threat during MARSEC Level 1.

As reflected in 33 CFR 101.105, MARSEC level means the level set to reflect the prevailing threat environment to the marine elements of the national transportation system, including ports, vessels, facilities, and critical assets and infrastructure located on or adjacent to waters subject to the jurisdiction of the U.S. The higher the level number, the greater the threat:

*MARSEC Level 1* means the level for which minimum appropriate protective security measures shall be maintained at all times.

*MARSEC Level 2* means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a transportation security incident.

*MARSEC Level 3* means the level for which further specific protective security measures shall be maintained for a limited period of time when a transportation security incident is probable or imminent, although it may not be possible to identify the specific target.

As specified in 33 CFR 101.300, the Captain of the Port will communicate any changes in the MARSEC levels through a local Broadcast Notice to Mariners, an electronic means, if available, or as detailed in the Area Maritime Security Plan developed under 46 U.S.C. 70103(b).

### Discussion of Comments and Changes

The Coast Guard received three comments in response to the NPRM. One comment was received from a private citizen; one comment was received from the Navigation Safety Advisory Council (NAVSAC); and one comment was received from the Florida Fish and Wildlife Conservation Commission (FWC).

The private citizen's comment addressed his displeasure of a security zone being used to protect cruise ships in the West Basin of Port Canaveral Harbor. The commenter felt that cruise ships should build private ports and not be permitted to dock in public waterways.

The Coast Guard took the individual's comments into consideration; however the need to protect cruise ships and their passengers and crew is of paramount concern to the Coast Guard. The Coast Guard feels the best way to address this concern is to establish this security zone. Since this zone will only be active during MARSEC 2 and 3 or when there is a specific credible threat during MARSEC 1, the Coast Guard has determined there will be minimal impact on all waterways users.

The comments from the NAVSAC and FWC addressed concerns pertaining to the rule's notification to the public when the security zone is activated. They are of the opinion that a red flag on a 50-foot pole located at the east end of Cruise Ship terminal 10 would not be an appropriate means of notifying the public. The NAVSAC and FWC are concerned that the red flag could be mistaken as the ''divers down'' flag or the ''bravo'' flag. They are also of the opinion that law enforcement officers will be reluctant to enforce the regulation against vessel operators who claim not to have understood the meaning of the red flag. They believe the use of a red flag will make it more difficult to prosecute violators of the security zone because it will be harder to prove the element of knowledge. They feel prosecutors will be less likely to accept these cases and judges will be more likely to dismiss the charges. The NAVSAC and FWC recommend that a regulatory mark be placed at the

entrance to the West Basin of Port Canaveral Harbor to notify the public when the security zone was activated.

The Coast Guard concurs with the NAVSAC and FWC's concerns over the use of a red flag, and will use a red ball which is consistent with other security zone regulations in the Port Canaveral area. A permanent regulatory mark would be impracticable due to the need to activate the zone quickly. To ensure boaters are given sufficient knowledge of the security zone, the Coast Guard will continuously broadcast the activations of the zone and law enforcement vessels will be on scene to inform boaters that the zone has been activated. Vessels encroaching on the security zone will be issued a Public Notice which clearly states the location of the security zone and the times it will be enforced. This will be the boater's first warning prior to enforcement action being taken.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) because this security zone would only be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during MARSEC Levels 2 and 3 or when there is a specific credible threat during MARSEC Level 1. Once activated, this security zone would remain activated until the departure of all cruise ships from the West Basin or when the Captain of the Port Jacksonville (COTP) determines there is a specific credible threat during MARSEC Level 1. This security zone would be wholly confined within the existing West Basin and would not impede traffic transiting from the Banana River to the Atlantic Ocean.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin. It is only enforceable during MARSEC Levels 2 and 3 or when there is a specific credible threat during MARSEC Level 1. Once activated, this security zone will remain activated until the departure of all cruise ships from the West Basin. This security zone will be wholly confined within the existing West Basin and will not impede traffic transiting from the Banana River to the Atlantic Ocean.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.777 to read as follows:

### § 165.777 Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, Florida.

(a) *Regulated area.* The following area is a security zone: All waters of the West Basin of Port Canaveral Harbor northwest of an imaginary line between two points: 28°24′57.88″ N, 080°37′25.69″ W to 28°24′37.48″ N, 080°37′34.03″ W.

(b) *Requirement.* (1) This security zone will be activated 4 hours prior to the scheduled arrival of a cruise ship at the West Basin of Port Canaveral Harbor during MARSEC Levels 2 and 3 or when the COTP determines there is a specified credible threat during MARSEC Level 1. This security zone will not be deactivated until the departure of all cruise ships from the West Basin. The zone is subject to enforcement when it is activated.

(2) Under general security zone regulations of 33 CFR 165.33, no vessel or person may enter or navigate within the regulated area unless specifically authorized by the COTP or the COTP's designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any direction given by the COTP or a designated representative and leave the security zone immediately if so ordered.

(3) The public will be notified when the security zone is activated by the display of a red ball on a 50-foot pole located at the east end of Cruise Ship terminal 10. This red ball will be lowered when the security zone is deactivated. To ensure boaters are given sufficient knowledge of the security zone, the Coast Guard will continuously broadcast the activations of the zone and law enforcement vessels will be on scene to inform boaters that the zone has been activated. Vessels encroaching on the security zone will be issued a Public Notice which clearly states the location of the security zone and the times it will be enforced. This will be the boater's first warning prior to enforcement action being taken.

(c) *Definitions.* The following definition applies to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local law enforcement officers designated by or assisting the COTP in the enforcement of the security zone.

(d) *Captain of the Port Contact Information.* If you have questions about this regulation, please contact the Sector Command Center at (904) 564–7513.

(e) *Enforcement periods.* This section will only be subject to enforcement when the security zone described in paragraph (a) is activated as specified in paragraph (b)(1) of this section.

Dated: March 26, 2009.

**Paul F. Thomas,**

*Captain, U.S. Coast Guard, Captain of the Port Jacksonville.*

[FR Doc. E9–7985 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL–8760–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Kansas; Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by Kansas that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

**DATES:** *Effective Date:* This action is effective April 8, 2009.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, or at *http://www.epa.gov/region07/programs/artd/air/rules/fedapprv.htm*; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation Docket at (202) 566–1742. 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*.

**FOR FURTHER INFORMATION CONTACT:** Evelyn VanGoethem at (913) 551–7659, or by e-mail at *vangoethem.evelyn@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the state revises as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions

containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On February 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Kansas. On November 14, 2003 (68 FR 64532), EPA published an update to the IBR material for Kansas.

In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of December 1, 2008.

2. Correcting the date format in the ''State effective date'' or ''State submittal date'' and ''EPA approval date'' columns in § 52.870 paragraphs (c), (d) and (e). Dates are numerical month/day/year without additional zeros.

3. Modifying the **Federal Register** citation in § 52.870 paragraphs (c), (d) and (e) to reflect the beginning page of the preamble as opposed to the page number of the regulatory text.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by providing notice of the updated Kansas SIP compilation.

**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. 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).

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. This action is simply an announcement of prior rulemakings that have previously undergone notice and comment. Prior EPA rulemaking actions for each individual component of the Kansas SIP compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

**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: March 26, 2009.

**William Rice,**

*Acting Regional Administrator, Region 7.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart R—Kansas

■ 2. In § 52.870 paragraphs (b), (c), (d) and (e) are revised to read as follows:

**§ 52.870 Identification of plan.**

* * * * *

(b) *Incorporation by reference.*

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to December 1, 2008, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA

approval dates after December 1, 2008, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 7 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of December 1, 2008.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; at the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460; or at the National Archives and Records Administration (NARA). If you wish to obtain material from the EPA Regional Office, please call (913) 551–7659; for material from a docket in EPA Headquarters Library, please call the Office of Air and Radiation Docket at (202) 566–1742. 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*.

(c) *EPA-approved regulations.*

EPA-APPROVED KANSAS REGULATIONS

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control** | | | | |
| **General Regulations** | | | | |
| K.A.R. 28–19–6 ..... | Statement of Policy ..... | 1/1/72 | 5/31/72, 37 FR 10867 ..... | Kansas revoked this rule 5/1/82. |
| K.A.R. 28–19–8 ..... | Reporting Required ..... | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–9 ..... | Time Schedule for Compliance. | 5/1/84 | 12/21/87, 52 FR 48265. | |
| K.A.R. 28–19–10 ..... | Circumvention of Control Regulations. | 1/1/71 | 5/31/72, 37 FR 10867. | |
| K.A.R. 28–19–11 ..... | Exceptions Due to Breakdowns or Scheduled Maintenance. | 1/1/74 | 11/8/73, 38 FR 30876. | |
| K.A.R. 28–19–12 ..... | Measurement of Emissions. | 1/1/71 | 5/31/72, 37 FR 10867. | |
| K.A.R. 28–19–13 ..... | Interference with Enjoyment of Life and Property. | 1/1/74 | 11/8/73, 38 FR 30876. | |
| K.A.R. 28–19–14 ..... | Permits Required ..... | 1/24/94 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–15 ..... | Severability ..... | 1/1/71 | 5/31/72, 37 FR 10867. | |
| **Nonattainment Area Requirements** | | | | |
| K.A.R. 28–19–16 ..... | New Source Permit Requirements for Designated Nonattainment Areas. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16a ..... | Definitions ..... | 10/10/97 | 1/11/00, 65 FR 1545. | |
| K.A.R. 28–19–16b ..... | Permit Required ..... | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16c ..... | Creditable Emission Reductions. | 10/16/89 | 1/16/90, 55 FR 1420 ..... | The EPA deferred action on the state's current definition of the terms ''building, structure, facility, or installation''; ''installation''; and ''reconstruction.'' |
| K.A.R. 28–19–16d ..... | Fugitive Emission Exemption. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16e ..... | Relaxation of Existing Emission Limitations. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16f ..... | New Source Emission Limits. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16g ..... | Attainment and Maintenance of National Ambient Air Quality Standards. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16h ..... | Compliance of Other Sources. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16i ..... | Operating Requirements. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16j ..... | Revocation and Suspension of Permit. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16k ..... | Notification Requirements. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–16l ..... | Failure to Construct ..... | 10/16/89 | 1/16/90, 55 FR 1420. | |

EPA-APPROVED KANSAS REGULATIONS—Continued

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| K.A.R. 28–19–16m .... | Compliance with Provisions of Law Required. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| | **Attainment Area Requirements** | | | |
| K.A.R. 28–19–17 ..... | Prevention of Significant Deterioration of Air Quality. | 11/22/02 | 2/26/03, 68 FR 8845 ..... | K.A.R. 28–19–17a through 28–19–17q revoked. Provision moved to K.A.R. 28–19–350. |
| | **Stack Height Requirements** | | | |
| K.A.R. 28–19–18 ..... | Stack Heights ..... | 5/1/88 | 4/20/89, 54 FR 15934 ..... | The state regulation has stack height credit. The EPA has not approved that part. |
| K.A.R. 28–19–18b ..... | Definitions ..... | 5/1/88 | 4/20/89, 54 FR 15934. | |
| K.A.R. 28–19–18c ..... | Methods for Determining Good Engineering Practice Stack Height. | 5/1/88 | 4/20/89, 54 FR 15934. | |
| K.A.R. 28–19–18d ..... | Fluid Modeling ..... | 5/1/88 | 4/20/89, 54 FR 15934. | |
| K.A.R. 28–19–18e ..... | Relaxation of Existing Emission Limitations. | 5/1/88 | 4/20/89, 54 FR 15934. | |
| K.A.R. 28–19–18f ..... | Notification Requirements. | 5/1/88 | 4/20/89, 54 FR 15934. | |
| | **Continuous Emission Monitoring** | | | |
| K.A.R. 28–19–19 ..... | Continuous Emission Monitoring. | 6/8/92 | 1/12/93, 58 FR 3847. | |
| | **Processing Operation Emissions** | | | |
| K.A.R. 28–19–20 ..... | Particulate Matter Emission Limitations. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–21 ..... | Additional Emission Restrictions. | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–23 ..... | Hydrocarbon Emissions—Stationary Sources. | 12/27/72 | 11/8/73, 38 FR 30876. | |
| K.A.R. 28–19–24 ..... | Control of Carbon Monoxide Emissions. | 1/1/72 | 11/8/73, 38 FR 30876. | |
| | **Indirect Heating Equipment Emissions** | | | |
| K.A.R. 28–19–30 ..... | General Provisions ..... | 1/1/72 | 5/31/72, 37 FR 10867. | |
| K.A.R. 28–19–31 ..... | Emission Limitations ... | 11/8/93 | 10/18/94, 59 FR 52425. | |
| K.A.R. 28–19–32 ..... | Exemptions—Indirect Heating Equipment. | 11/8/93 | 10/18/94, 59 FR 52425. | |
| | **Incinerator Emissions** | | | |
| K.A.R. 28–19–40 ..... | General Provisions ..... | 1/1/71 | 5/31/72, 37 FR 10867. | |
| K.A.R. 28–19–41 ..... | Restriction of Emission | 12/27/72 | 11/8/73, 38 FR 30876. | |
| K.A.R. 28–19–42 ..... | Performance Testing ... | 1/1/72 | 11/8/73, 38 FR 30876. | |
| K.A.R. 28–19–43 ..... | Exceptions ..... | 1/1/71 | 5/31/72, 37 FR 10867. | |
| | **Air Pollution Emergencies** | | | |
| K.A.R. 28–19–55 ..... | General Provisions ..... | 1/1/72 | 5/31/72, 37 FR 10867. | |
| K.A.R. 28–19–56 ..... | Episode Criteria ..... | 10/16/89 | 1/16/90, 55 FR 1420. | |
| K.A.R. 28–19–57 ..... | Emission Reduction Requirements. | 1/1/72 | 5/31/72, 37 FR 10867. | |
| K.A.R. 28–19–58 ..... | Emergency Episode Plans. | 1/1/72 | 5/31/72, 37 FR 10867. | |
| | **Volatile Organic Compound Emissions** | | | |
| K.A.R. 28–19–61 ..... | Definitions ..... | 10/7/91 | 6/23/92, 57 FR 27936. | |
| K.A.R. 28–19–62 ..... | Testing Procedures ..... | 10/7/71 | 6/23/92, 57 FR 27936. | |
| K.A.R. 28–19–63 ..... | Automobile and Light Duty Truck Surface Coating. | 11/8/93 | 10/18/94, 59 FR 52425. | |

EPA-APPROVED KANSAS REGULATIONS—Continued

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| K.A.R. 28–19–64 ..... | Bulk Gasoline Terminals. | 5/1/88 | 5/18/88, 53 FR 17700. | |
| K.A.R. 28–19–65 ..... | Volatile Organic Compounds (VOC) Liquid Storage in Permanent Fixed Roof Type Tanks. | 5/1/88 | 5/18/88, 53 FR 17700. | |
| K.A.R. 28–19–66 ..... | Volatile Organic Compounds (VOC) Liquid Storage in External Floating Roof Tanks. | 5/1/88 | 5/18/88, 53 FR 17700. | |
| K.A.R. 28–19–67 ..... | Petroleum Refineries ... | 5/1/86 | 1/2/87, 52 FR 53. | |
| K.A.R. 28–19–68 ..... | Leaks from Petroleum Refinery Equipment. | 5/1/86 | 1/2/87, 52 FR 53. | |
| K.A.R. 28–19–69 ..... | Cutback Asphalt ..... | 5/1/88 | 5/18/88, 53 FR 17700. | |
| K.A.R. 28–19–70 ..... | Leaks from Gasoline Delivery Vessels and Vapor Collection Systems. | 5/15/98 | 1/11/00, 65 FR 1545. | |
| K.A.R. 28–19–71 ..... | Printing Operations ..... | 5/1/88 | 5/18/88, 53 FR 17700. | |
| K.A.R. 28–19–72 ..... | Gasoline Dispensing Facilities. | 5/1/88 | 5/18/88, 53 FR 17700. | |
| K.A.R. 28–19–73 ..... | Surface Coating of Miscellaneous Metal Parts and Products and Metal Furniture. | 6/8/92 | 1/12/93, 58 FR 3847. | |
| K.A.R. 28–19–74 ..... | Wool Fiberglass Manufacturing. | 5/1/88 | 5/18/88, 53 FR 17700. | |
| K.A.R. 28–19–76 ..... | Lithography Printing Operations. | 10/7/91 | 6/23/92, 57 FR 27936. | |
| K.A.R. 28–19–77 ..... | Chemical Processing Facilities That Operate Alcohol Plants or Liquid Detergent Plants. | 10/7/91 | 6/23/92, 57 FR 27936. | |
| | **General Provisions** | | | |
| K.A.R. 28–19–200 ..... | General Provisions; definitions. | 10/10/97 | 1/11/00, 65 FR 1545 ..... | New rule. Replaces K.A.R. 28–19–7 definitions. |
| K.A.R. 28–19–201 ..... | General Provisions; Regulated Compounds List. | 10/10/97 | 1/11/00, 65 FR 1545 ..... | New rule. Replaces Regulated Compounds in K.A.R. 28–19–7. |
| K.A.R. 28–19–204 ..... | Permit Issuance and Modification; Public Participation. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–210 ..... | Calculation of Actual Emissions. | 11/22/93 | 1/11/00, 65 FR 1545. | |
| K.A.R. 28–19–212 ..... | Approved Test Methods and Emission Compliance Determination Procedures. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| | **Construction Permits and Approvals** | | | |
| K.A.R. 28–19–300 ..... | Applicability ..... | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–301 ..... | Application and Issuance. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–302 ..... | Additional Provisions; Construction Permits. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–303 ..... | Additional Provisions; Construction Approvals. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–304 ..... | Fees ..... | 1/23/95 | 7/17/95, 60 FR 36361. | |

EPA-APPROVED KANSAS REGULATIONS—Continued

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| K.A.R. 28–19–350 ..... | Prevention of Significant Deterioration (PSD) of Air Quality. | 6/30/06 | 5/29/07, 72 FR 29429 ..... | Kansas did not adopt subsections with references to the clean unit exemptions, pollution control projects and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test because of the June 24, 2005, decision of the United States Court of Appeals for the District of Columbia Circuit relating to the Clean Unit Exemption, Pollution Control Projects and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test. |
| **General Permits** | | | | |
| K.A.R. 28–19–400 ..... | General Requirements | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–401 ..... | Adoption by the Secretary. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–402 ..... | Availability of Copies; Lists of Sources to Which Permits Issued. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–403 ..... | Application to Construct or Operate Pursuant to Terms of General Permits. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–404 ..... | Modification, Revocation. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| **Operating Permits** | | | | |
| K.A.R. 28–19–500 ..... | Applicability ..... | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–501 ..... | Emissions Limitations and Pollution Control Equipment for Class I and Class II Operating Permits; Conditions. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–502 ..... | Identical Procedural Requirements. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| **Class II Operating Permits** | | | | |
| K.A.R. 28–19–540 ..... | Applicability ..... | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–541 ..... | Application Timetable and Contents. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–542 ..... | Permit-by-Rule ..... | 9/23/05 | 2/8/08, 73 FR 7468. | |
| K.A.R. 28–19–543 ..... | Permit Term and Content; Operational Compliance. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–544 ..... | Modification of Sources or Operations. | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–545 ..... | Application Fee ..... | 1/23/95 | 7/17/95, 60 FR 36361. | |
| K.A.R. 28–19–546 ..... | Annual Emission Inventory. | 9/23/05 | 2/8/08, 73 FR 7468. | |
| K.A.R. 28–19–561 ..... | Permit-by-Rule; Reciprocating Engines. | 9/23/05 | 2/8/08, 73 FR 7468. | |
| K.A.R. 28–19–562 ..... | Permit-by-Rule; Organic Solvent Evaporative Sources. | 9/23/05 | 2/8/08, 73 FR 7468. | |
| K.A.R. 28–19–563 ..... | Permit-by-Rule; Hot Mix Asphalt Facilities. | 9/23/05 | 2/8/08, 73 FR 7468. | |
| K.A.R. 28–19–564 ..... | Permit-by-Rule; Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds. | 10/4/02 | 3/26/03, 68 FR 14540. | |

EPA-APPROVED KANSAS REGULATIONS—Continued

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| | | **Open Burning Restrictions** | | |
| K.A.R. 28–19–645 ..... | Open Burning Prohibited. | 3/1/96 | 10/2/96, 61 FR 51366. | |
| K.A.R. 28–19–646 ..... | Responsibility for Open Burning. | 3/1/96 | 10/2/96, 61 FR 51366. | |
| K.A.R. 28–19–647 ..... | Exceptions to Prohibition on Open Burning. | 3/1/96 | 10/2/96, 61 FR 51366. | |
| K.A.R. 28–19–648 ..... | Agricultural Open Burning. | 3/1/96 | 10/2/96, 61 FR 51366. | |
| K.A.R. 28–19–650 ..... | Emissions Opacity Limits. | 1/29/99 | 1/11/00, 65 FR 1545 ..... | New rule. Replaces K.A.R. 28–19–50 and 28–19–52. |
| | | **Volatile Organic Compound Emissions** | | |
| K.A.R. 28–19–714 ..... | Control of Emissions from Solvent Metal Cleaning. | 9/1/02 | 10/30/02, 67 FR 66058. | |
| K.A.R. 28–19–717 ..... | Control of Volatile Organic Compound (VOC) Emissions from Commercial Bakery Ovens in Johnson and Wyandotte Counties. | 12/22/00 | 12/12/01, 66 FR 64148. | |
| K.A.R. 28–19–719 ..... | Fuel Volatility ..... | 4/27/01 | 2/13/02, 67 FR 6655. | |
| | | **Conformity** | | |
| K.A.R. 28–19–800 ..... | General Conformity of Federal Actions. | 3/15/96 | 10/2/96, 61 FR 51366. | |

(d) *EPA-approved State source-specific permits.*

EPA-APPROVED KANSAS SOURCE-SPECIFIC PERMITS

| Name of source | Permit No. | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| (1) Board of Public Utilities, Quindaro Power Station. | 2090048 | 10/20/93 | 10/18/94, 59 FR 52425. | |
| (2) Board of Public Utilities, Kaw Power Station ... | 2090049 | 10/20/93 | 10/18/94, 59 FR 52425. | |

(e) *EPA-approved nonregulatory provisions and quasi-regulatory measures.*

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or Nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| (1) Implementation Plan for Attainment and Maintenance of the National Air Quality Standards. | Statewide ..... | 1/31/72 ..... | 5/31/72, 37 FR 10867. | |
| (2) Comments on the Plan in Response to EPA Review. | Kansas City ..... | 3/24/72 ..... | 6/22/73, 38 FR 16550 | Correction notice published 3/2/76. |
| (3) Emergency Episode Operations/Communications Manual. | Kansas City ..... | 4/6/72 ..... | 11/8/73, 38 FR 30876 | Correction notice published 3/2/76. |
| (4) Emergency Episode Operations/Communications Manual. | Statewide except Kansas City. | 2/15/73 ..... | 11/8/73, 38 FR 30876 | Correction notice published 3/2/76. |
| (5) Letter Concerning Attainment of CO Standards. | Kansas City ..... | 5/29/73 ..... | 11/8/73, 38 FR 30876 | Correction notice published 3/2/76. |

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS—Continued

| Name of nonregulatory SIP provision | Applicable geographic or Nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| (6) Amendment to State Air Quality Control Law Dealing with Public Access to Emissions Data. | Statewide | 7/27/73 | 11/8/73, 38 FR 30876 | Correction notice published 3/2/76. |
| (7) Analysis and Recommendations Concerning Designation of Air Quality Maintenance Areas. | Statewide | 2/28/74 | 3/2/76, 41 FR 8956. | |
| (8) Ozone Nonattainment Plan | Kansas City | 9/17/79 | 4/3/81, 46 FR 20164. | |
| (9) Ozone Nonattainment Plan | Douglas County | 10/22/79 | 4/3/81, 46 FR 20164. | |
| (10) TSP Nonattainment Plan | Kansas City | 3/10/80 | 4/3/81, 46 FR 20164. | |
| (11) Lead Plan | Statewide | 2/17/81 | 10/22/81, 46 FR 51742. | |
| (12) CO Nonattainment Plan | Wichita | 4/16/81 | 12/15/81, 46 FR 61117. | |
| (13) Air Monitoring Plan | Statewide | 10/16/81 | 1/22/82, 47 FR 3112. | |
| (14) Letter and Supporting Documentation Relating to Reasonably Available Control Technology for Certain Particulate Matter Sources. | Kansas City | 9/15/81 | 6/18/82, 47 FR 26387 | Correction notice published 1/12/84. |
| (15) Letter Agreeing to Follow EPA Interim Stack Height Policy for Each PSD Permit Issued Until EPA Revises the Stack Height Regulations. | Statewide | 6/20/84 | 12/11/84, 49 FR 48185. | |
| (16) Letters Pertaining to Permit Fees | Statewide | 3/27/86, 9/15/87 | 12/21/87, 52 FR 48265. | |
| (17) Revisions to the Ozone Attainment Plan | Kansas City | 7/2/86, 4/16/87, 8/18/87, 8/19/87, 1/6/88. | 5/18/88, 53 FR 17700. | |
| (18) Revised CO Plan | Wichita | 3/1/85, 9/3/87 | 10/28/88, 53 FR 43691. | |
| (19) Letter Pertaining to the Effective Date of Continuous Emission Monitoring Regulations. | Statewide | 1/6/88 | 11/25/88, 53 FR 47690. | |
| (20) Letters Pertaining to New Source Permit Regulations, Stack Height Regulations, and Stack Height Analysis and Negative Declarations. | Statewide | 3/27/86, 12/7/87, 1/6/88. | 4/20/89, 54 FR 15934. | |
| (21) $PM_{10}$ Plan | Statewide | 10/5/89, 10/16/89 | 1/16/90, 55 FR 1420. | |
| (22) Ozone Maintenance Plan | Kansas City | 10/23/91 | 6/23/92, 57 FR 27936. | |
| (23) Letter Pertaining to PSD $NO_X$ Requirements. | Statewide | 9/15/92 | 1/12/93, 58 FR 3847. | |
| (24) Small Business Assistance Plan | Statewide | 1/25/94 | 5/12/94, 59 FR 24644. | |
| (25) Letter Regarding Compliance Verification Methods and Schedules Pertaining to the Board of Public Utilities Power Plants. | Kansas City | 12/11/92 | 10/18/94, 59 FR 52425. | |
| (26) Emissions Inventory Update Including a Motor Vehicle Emissions Budget. | Kansas City | 5/11/95 | 4/25/96, 61 FR 18251. | |
| (27) Air monitoring plan | Statewide | 1/6/02 | 8/30/02, 67 FR 55726. | |
| (28) Maintenance Plan for the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area for the second ten-year period. | Kansas City | 1/9/03 | 1/13/04, 69 FR 1919. | |
| (29) Revision to Maintenance Plan for the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area for the second ten-year period. | Kansas City | 2/10/06 | 6/26/06, 71 FR 36213. | |
| (30) CAA 110(a)(2)(D)(i) SIP—Interstate Transport. | Statewide | 1/7/07 | 3/9/07, 72 FR 10608. | |
| (31) Maintenance Plan for the 8-hour ozone standard in the Kansas portion of the Kansas City area. | Kansas City | 5/23/07 | 8/9/07, 72 FR 44781. | This plan replaces numbers (28) and (29). |

[FR Doc. E9–7959 Filed 4–7–09; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R02–OAR–2008–0479; FRL–8775–5]**

## Determination of Attainment of the One-Hour Ozone Standard for the Southern New Jersey Portion of the Philadelphia Metropolitan Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the one-hour ozone nonattainment area in Southern New Jersey, that is, the New Jersey portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD area, attained the one-hour ozone standard, is not subject to the imposition of penalty fees under section 185 of the Clean Air Act and does not need to implement contingency measures. Areas that EPA classified as severe ozone nonattainment areas for the one-hour National Ambient Air Quality Standard and did not attain the Standard by the applicable attainment date of November 15, 2005 may be subject to these penalty fees. However, since the air quality in the Philadelphia-Wilmington-Trenton area attained the ozone standard as of November 15, 2005, this area will not need to implement this fee program. This is not a redesignation of atttainment for this area, only a fulfillment of a Clean Air Act obligation to determine if an area attained the ozone standard by its applicable attainment date.

**DATES:** *Effective Date:* This rule is effective on May 8, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R02–OAR–2008–0479. 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.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866. To make your visit as productive as possible, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone number (212) 637–4249, fax number (212) 637–3901, e-mail *kelly.bob@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

EPA has determined that the New Jersey portion of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD one-hour ozone nonattainment area (the ''Philadelphia metropolitan'' nonattainment area) attained the one-hour ozone National Ambient Air Quality Standard (NAAQS) by its attainment date, November 15, 2005. (The Philadelphia metropolitan nonattainment area consists of the following counties: Cecil County, Maryland; Kent and New Castle Counties in Delaware; Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties in New Jersey; and, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania.) As a result, EPA finds that this area is not subject to the imposition of the section 185 penalty fees and does not need to implement contingency measures. In a separate final rule at 73 FR 43360, EPA's Region 3 office found that the balance of the Philadelphia metropolitan nonattainment area attained the one-hour ozone NAAQS by its applicable attainment date and is not subject to the imposition of section 185 penalty fees. Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the Proposed Rulemaking published on July 23, 2008 (73 FR 42727). The proposal was based on three years of complete, quality-assured ambient air quality monitoring data for 2003 through 2005 ozone seasons. This determination of attainment is not a redesignation to attainment for this area. Persons seeking more information on this action should access EPA's docket for this action at *http://www.regulations.gov*, docket number EPA–R02–OAR–2008–0479. EPA received no comments on the proposed action.

### II. Final Action

Based upon EPA's review of the air quality data for the 3-year period 2003 to 2005, EPA has determined that the New Jersey portion of the Philadelphia metropolitan area has attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that this area is not subject to the imposition of the section 185 penalty fees. In addition, because the area has attained the one-hour ozone NAAQS by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the one-hour ozone NAAQS by its attainment date. Since the area has met its attainment deadline, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to attain the one-hour ozone NAAQS by its attainment date.

### III. Statutory and Executive Order Reviews

This final action determines that an area has attained a previously-established NAAQS based on an objective review of measured air quality data. Accordingly, this action merely affirms that state actions are 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 New Jersey's State Implementation Plans are 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. 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 June 8, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 12, 2009.

**George Pavlou,**

*Acting Regional Administrator, Region 2.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart FF—New Jersey

■ 2. Section 52.1582 is amended by adding new paragraph (l) to read as follows:

**§ 52.1582 Control strategy and regulations: Ozone.**

* * * * *

(l) *Attainment determination.* EPA has determined that the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. In New Jersey, this area includes the counties of Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem. EPA also has determined that the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area is not subject to the imposition of the section 185 penalty fees. In addition, the requirements of section 172(c)(9) (contingency measures) do not apply to the area.

[FR Doc. E9–7683 Filed 4–7–09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0762; FRL–8408–7]**

### Bacillus subtilis MBI 600; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the biofungicide, *Bacillus subtilis* MBI 600, in or on all food commodities, including residues resulting from post-harvest uses, when applied/used in accordance with good agricultural practices. Becker Underwood, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to expand the existing exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* MBI 600 in or on all food commodities.

**DATES:** This regulation is effective April 8, 2009. Objections and requests for hearings must be received on or before June 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0762. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

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*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0762 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0762, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of November 14, 2008 (73 FR 67512) (FRL–8388–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 8F7368) by Becker Underwood, Inc., 801 Dayton Ave., P. O. Box 667, Ames, IA 50010. The petition requested that 40 CFR 180.1128 be amended by expanding the existing exemption from the requirement of a tolerance for the biofungicide *Bacillus subtilis* MBI 600 to cover residues in or on all food commodities, including residues resulting from post-harvest uses. The notice included a summary of the petition prepared by the petitioner Becker Underwood, Inc.

Previously, on June 8, 1994 (59 FR 29543) (FRL–4865–8), EPA issued a final rule granting an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* MBI 600 in or on all raw agricultural commodities when applied as a seed treatment on seeds used for growing agricultural crops. In submitting this current petition (i.e., 8F7368), Becker Underwood, Inc. is relying on the data previously submitted by another company, Gustafson, Inc., in support of the existing tolerance exemption for *Bacillus subtilis* MBI 600. These data were previously summarized by EPA in the June 8, 1994, final rule. On July 18, 2002, EPA issued a Tolerance Reassessment Decision in which it found that the existing tolerance exemption for *Bacillus subtilis* MBI 600 continues to meet the FQPA safety standard. This determination in 2002 was based on EPA's review of the data on which Becker Underwood, Inc., is now relying in connection with this action.

There was one comment received in response to the notice of filing. The commenter expressed dissatisfaction with the level of safety EPA provides to Americans. Pursuant to its authority under the FFDCA, EPA conducted a comprehensive assessment of *Bacillus subtilis* MBI 600, including a review of studies addressing acute oral, pulmonary and intravenous injection toxicity/pathogenicity; acute dermal toxicity; primary eye irritation: and skin sensitization. EPA review of these studies indicated that the active ingredient is not toxic to test animals when administered via the oral, pulmonary, intravenous or dermal routes of exposure. In addition, the active ingredient was not infective or pathogenic to test animals when administered via the oral, pulmonary or intravenous routes. Moreover, no reports of hypersensitivity have been recorded in personnel working with this organism. Based on these data, the Agency has concluded that there is a reasonable certainty that no harm will result from dietary exposure to residues of *Bacillus subtilis* MBI 600 in or on all food commodities, including residues resulting from post-harvest uses. Thus, under the standard in FFDCA section 408(c)(2), an exemption from the requirement of a tolerance is appropriate.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate

exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

**III. Toxicological Profile**

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Toxicological data on the active ingredient were previously submitted to support the existing exemption from the requirement of a tolerance for residues of *Bacillus subtilis* MBI 600 resulting from its use in the treatment of seeds used for growing agricultural crops, and to support various pesticide product registrations held by the petitioner. The previously submitted studies on the active ingredient include the following:

An acceptable acute oral toxicity/pathogenicity study performed in rats (MRID 419074–02) demonstrated the lack of mammalian toxicity at high levels of exposure to *Bacillus subtilis* MBI 600. In this study, *Bacillus subtilis* MBI 600 was not toxic, infective nor pathogenic to rats given an oral dose of $2 \times 10^8$ colony forming units (CFU) per animal. The study resulted in a classification of Toxicity Category IV for this strain of *Bacillus subtilis*.

An acceptable acute pulmonary toxicity/pathogenicity study in rats (MRID 419074–04) demonstrated that *Bacillus subtilis* MBI 600 was neither toxic, pathogenic nor infective to rats dosed intratracheally with $3.4 \times 10^8$ CFU of the test material. The study resulted in a classification of Toxicity Category IV for this strain of *Bacillus subtilis*.

An acceptable acute intravenous injection toxicity/pathogenicity study in rats (MRID 419074–05) demonstrated that *Bacillus subtilis* MBI 600 was neither toxic, pathogenic nor infective to rats dosed intravenously with approximately $4 \times 10^7$ CFU of the test material. Although the microbe was detected in every organ tested, the test material displayed a distinct pattern of clearance. The study resulted in a classification of Toxicity Category IV for this strain of *Bacillus subtilis*.

An acceptable acute dermal toxicity study in rabbits (MRID 419074–03) demonstrated that *Bacillus subtilis* MBI 600 was not toxic to rabbits when a single $5 \times 10^{10}$ dose was administered dermally. The study resulted in a classification of Toxicity Category IV for this strain of *Bacillus subtilis*.

An acceptable primary eye irritation study in rabbits (MRID 419074–06) demonstrated that *Bacillus subtilis* MBI 600 produced a slight ocular irritation when a single 0.1 gram ocular dose was administered. Ocular irritation dissipated by day 4. The study resulted in a classification of Toxicity Category IV for this strain of *Bacillus subtilis*.

A supplemental skin sensitization test resulted in an overall moderate reaction in guinea pigs 24 to 78 hours post-treatment. However, an acceptable dermal sensitization study, conducted with an end use formulation, demonstrated no irritation 2 weeks after sensitization and treatment using 400 milligrams of test material. As a result, the product was determined to not be a dermal sensitizer. Furthermore, in the nearly 15 years since its initial registration as an active ingredient, there have been no hypersensitivity reports associated with *Bacillus subtilis* MBI 600 pesticide products.

**IV. Aggregate Exposures**

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

*A. Dietary Exposure*

*Bacillus subtilis* MBI 600 is ubiquitous in the environment, especially in soils and agricultural environments (indeed, strain MBI 600 of *Bacillus subtilis* is a naturally-occurring isolate of the genus *Bacillus*, originally isolated from faba beans grown at Nottingham University School of Agriculture in the United Kingdom). As a result, dietary exposure to background levels of the naturally occurring microbe likely is already occurring and likely will continue to occur. Because of its ubiquitous presence in the environment, the Agency expects there to be no increase in exposure to *Bacillus subtilis* MBI 600 resulting from the existing and proposed pesticidal uses when compared to existing exposure to background levels of *Bacillus subtilis* MBI 600.

1. *Food*. As discussed above, dietary exposure to the naturally occurring microbe likely is already occurring and likely will continue to occur. Notably, similar *Bacillus subtilis* strains are used internationally in the production of food grade products and in fermented foods in Japan and Thailand. Reports in the literature implicating *Bacillus subtilis* (as distinguished from the specific strain, *Bacillus subtilis* MBI 600, at issue in this action) in food-borne illness do not describe any pathogen or toxin production, but rather simple spoilage from *Bacillus subtilis* growth in dough. Such low-quality dough would not be suitable for bread production by commercial bakeries and so the Agency considers this particular food exposure scenario to be unlikely and the risk to be negligible. The risk posed to adults, infants and children from food-related exposures to *Bacillus subtilis* MBI 600 is minimal due to the demonstrated lack of acute oral toxicity/pathogenicity associated with the microbial pesticide. Based on the evaluation of the submitted data, there are no dietary risks that exceed the Agency's level of concern.

2. *Drinking water exposure*. Because *Bacillus subtilis* MBI 600 is ubiquitous in the environment, exposure to the microbe through drinking water may already be occurring and likely will continue to occur. While the proposed and existing use sites do not include direct application to aquatic environments, the intended use of *Bacillus subtilis* MBI 600 is treatment of growing crops or seed for the control of plant disease. If such uses were to result in pesticide spray drift or runoff that were to reach surface or ground waters, there is the potential for human exposure to *Bacillus subtilis* MBI 600 residues, albeit greatly diluted, in drinking water. Municipal drinking water treatment processes and deep water wells, however, would both further reduce any such residues. More importantly, even if oral exposure to this ubiquitous microbe should occur through drinking water, due to its demonstrated lack of acute oral toxicity/pathogenicity, the Agency concludes that there is a reasonable certainty that no harm will result from such exposure.

*B. Other Non-Occupational Exposure*

The pesticide uses of *Bacillus subtilis* MBI 600, both those currently allowed and the additional ones being established by this rule, are limited to commercial agricultural and horticultural settings. There are no residential uses. Nonetheless, because *Bacillus subtilis* MBI 600 is naturally occurring and ubiquitous in the environment, the potential for non-dietary, non-occupational exposure to

its residues for the general population, including infants and children, is likely since populations have probably been previously exposed (and likely will continue to be exposed) to background levels of the microbe. However, neither such common human exposures to *Bacillus subtilis* MBI 600 naturally present in soils, waters and plants, nor exposures associated with similar *Bacillus subtilis* strains used internationally in producing food-grade products and fermented foods, have resulted in reports of disease or other effects. Finally, while the literature includes accounts of *Bacillus subtilis* infections in humans (which consistently are reported only in otherwise-compromised individuals), those reports are most notable for their rare and exceptional nature.

EPA's evaluation of the required high-dose Tier I acute toxicity and pathogenicity tests resulted in the assignment of Toxicity Category IV (least toxic), and determinations of not infective and not pathogenic, for all exposure routes. No toxicological end points of concern were identified. There are no dietary endpoints that exceed the Agency's Level of Concern (LOC). Therefore, the Agency has determined that any additional exposure to the microbe resulting from residues attributable to *Bacillus subtilis* MBI 600 pesticide use will not result in additional aggregate non-occupational risk from dermal and inhalation exposures. This conclusion, based solely on non-occupational exposures, is consistent with EPA's determination that no occupational risks exceed the Agency's LOC, meaning that even regular occupational exposures associated with this active ingredient pose negligible risk.

## V. Cumulative Effects

No mechanism of toxicity in mammals has been identified for *Bacillus subtilis* MBI 600. Therefore, no cumulative effect with other related organisms is anticipated. Because the available data demonstrate a lack of toxicity/pathogenicity potential for the active ingredient, adverse dietary effects are unlikely.

## VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C), as amended by the Food Quality Protection Act (FQPA) of 1996, provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section (b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database, unless EPA determines that a different margin of safety will be safe for infants and children.

Based on the acute toxicity information discussed in Unit III., EPA concludes that there is a reasonable certainty that no harm will result to the United States population, including infants and children, from aggregate exposure to residues of *Bacillus subtilis* MBI 600. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because the data available on *Bacillus subtilis* MBI 600 demonstrate a lack of toxicity/pathogenicity potential. Thus, there are no threshold effects of concern and, as a result, the Agency has concluded that the additional tenfold margin of safety for infants and children is unnecessary in this instance. Further, the need to consider consumption patterns, special susceptibility, and cumulative effects does not arise when dealing with pesticides with no demonstrated significant adverse effects.

## VII. Other Considerations

### *A. Endocrine Disruptors*

*Bacillus subtilis* MBI 600 is a ubiquitous organism in the environment that is non-toxic to mammals. To date, there is no evidence to suggest that *Bacillus subtilis* MBI 600 affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor. Indeed, the submitted toxicity/pathogenicity studies in rodents indicate that, following several routes of exposure, the immune system is intact and able to process and clear the active ingredient. Therefore, it is unlikely that this organism will have estrogenic or endocrine effects.

### *B. Analytical Method*

The Agency is establishing an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* MBI 600 in or on all food commodities, including residues resulting from post-harvest uses, for the reasons stated above. Therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for detecting *Bacillus subtilis* MBI 600 residues resulting from its use as a pesticide.

### *C. Codex Maximum Residue Level*

No Codex maximum residue level (MRL) exists for *Bacillus subtilis* MBI 600.

## VIII. Conclusions

Based on the toxicity information for *Bacillus subtilis* MBI 600 that was previously submitted and reviewed, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to *Bacillus subtilis* MBI 600 under reasonably foreseeable circumstances when used as a microbial pesticide in accordance with its label and good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As a result, pursuant to FFDCA sections 408(c) and (d) EPA is establishing an exemption from the requirement of a tolerance for residues of the biofungicide *Bacillus subtilis* MBI 600 in or on all food commodities, including residues resulting from post-harvest uses, when applied or used in accordance with good agricultural practices.

## IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as

the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

### X. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 20, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1128 is revised to read as follows:

**§ 180.1128 *Bacillus subtilis* MBI 600; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Bacillus subtilis* MBI 600 in or on all food commodities, including residues resulting from post-harvest uses, when applied or used in accordance with good agricultural practices.

[FR Doc. E9–7172 Filed 4–7–09; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0167; FRL–8407–8]**

### Thiamethoxam; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of thiamethoxam and its metabolite CGA-322704 in or on citrus fruits, citrus pulp, tree nuts, almond hulls, and pistachios. Syngenta Crop Protection, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective April 8, 2009. Objections and requests for hearings must be received on or before June 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0167. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8735; e-mail address: *chao.julie@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

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under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0167 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before June 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0167, 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., N.W., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Petition for Tolerance

In the **Federal Register** of April 16, 2008 (73 FR 20632) (FRL–8359–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7293) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.565 be amended by establishing tolerances for combined residues of the insecticide thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine] and its metabolite CGA-322704 [*N*-(2-chloro-thiazol-5-ylmethyl)-*N*'-methyl-*N*'-nitro-guanidine], in or on fruit, citrus (crop group 10) at 0.3 parts per million (ppm); almond, nut, tree (crop group 14) including pistachio at 0.02 ppm; and almond hulls at 1.2 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that the tolerance level for citrus (crop group 10) needs to be raised, and that separate tolerances need to be established for pistachios and citrus, dried pulp. The reasons for these changes are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of thiamethoxam and its metabolite CGA-322704 on nut, tree (crop group 14) at 0.02 ppm; almond, hulls at 1.2 ppm; fruit, citrus (crop group 10) at 0.40 ppm; citrus, dried pulp at 0.60 ppm; pistachio at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Thiamethoxam shows toxicological effects primarily in the liver, kidney, testes, and hematopoietic system. In addition, developmental neurological effects were observed in rats. This developmental effect is being used to assess risks associated with acute exposures to thiamethoxam, and the liver and testicular effects are the bases for assessing longer term exposures. Although thiamethoxam causes liver tumors in mice, the Agency has classified thiamethoxam as ''not likely to be carcinogenic to humans'' based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. The non-cancer (chronic) assessment is sufficiently protective of the key events (perturbation of liver metabolism, hepatotoxicity/regenerative proliferation) in the animal mode of action for cancer published in the **Federal Register** of June 22, 2007 (72 FR 34401 (FRL–8133–6). Thiamethoxam produces a metabolite known as CGA-322704 (referred to in the remainder of this rule as clothianidin). Clothianidin is also registered as a pesticide. While some of the toxic effects observed following testing with the thiamethoxam and clothianidin are similar, the available information indicates that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately. A separate risk assessment of clothianidin has been completed in conjunction with the registration of clothianidin. The most recent assessment, which provides details regarding the toxicology of clothianidin are discussed in the final rule published in the **Federal Register** of February 6, 2008 (FRL–8346–9) at (*http://www.epa.gov/fedrgstr/EPA-*

*PEST/2008/February/Day-06/p1784.htm*).

Specific information on the studies received and the nature of the adverse effects caused by thiamethoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 22, 2007.

*B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 22, 2007.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to thiamethoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing thiamethoxam tolerances in (40 CFR 180.565). EPA assessed dietary exposures from thiamethoxam in food as follows:

For both acute and chronic exposure assessments for thiamethoxam, EPA combined residues of clothianidin coming from thiamethoxam with residues of thiamethoxam *per se*. As discussed in this unit, thiamethoxam's major metabolite is CGA-322704, which is also the registered active ingredient clothianidin. Available information indicates that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately, however, these exposure assessments for this action incorporated the total residue of thiamethoxam and clothianidin from use of thiamethoxam because the total residue for each commodity for which thiamethoxam has a tolerance has not been separated between thiamethoxam and its clothianidin metabolite. The combining of these residues, as was done in this assessment, results in highly conservative estimates of dietary exposure and risk. A separate assessment was done for clothianidin. The clothianidin assessment included clothianidin residues from use of clothianidin as a pesticide and clothianidin residues from use of thiamethoxam on those commodities for which the pesticide clothianidin does not have a tolerance. As to these commodities, EPA has separated total residues between thiamethoxam and clothianidin.

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed maximum residues of thiamethoxam and clothianidin observed in the thiamethoxam field trials. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam and 100% of crops with registered or requested uses of clothianidin are treated.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed maximum residues of thiamethoxam and clothianidin observed in the thiamethoxam field trials. It was also assumed that 100% of crops with registered or requested uses of thiamethoxam and 100% of crops with registered or requested uses of clothianidin are treated.

A complete listing of the inputs used in these assessments can be found in the following documents: *Thiamethoxam Acute and Chronic Aggregate Dietary and Drinking Water Exposure and Risk Assessments for FIFRA Section 3 Registration on Citrus and Tree Nut Crops; Clothianidin. Acute and Chronic Aggregate Dietary (Food and Drinking Water) Exposure and Risk Assessments for the Section 3 Registration of Thiamethoxam on Citrus and Tree Nut Crop Groups*. These documents are available in the docket EPA–HQ–OPP–2008–0167, at *http:///www.regulations.gov*.

iii. *Cancer*. A quantitative cancer exposure assessment is not necessary because EPA concluded that thiamethoxam is ''not likely to be carcinogenic to humans'' based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse, and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. The non-cancer (chronic) assessment is sufficiently protective of the key events (perturbation of liver metabolism, hepatotoxicity/regenerative proliferation) in the animal mode of action for cancer and thus a separate exposure assessment pertaining to cancer risk is not necessary. Because clothianidin is not expected to pose a cancer risk, a quantitative dietary exposure assessment for the purposes of assessing cancer risk was not conducted.

iv. *Anticipated residue information*. EPA did not use percent crop treated (PCT) information in the dietary assessments for thiamethoxam or clothianidin. Maximum field trial residues and 100 PCT were assumed for all food commodities.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues

that have been measured in food. If EPA relies on such information, EPA must require pursuant to section 408(f)(1) of FFDCA that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data Call-Ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* Thiamethoxam is expected to be persistent and mobile in terrestrial and aquatic environments. These fate properties suggest that thiamethoxam has a potential to move into surface water and shallow ground water. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for thiamethoxam in drinking water. Because the Agency does not have comprehensive monitoring data, the Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thiamethoxam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiamethoxam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Groundwater (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of thiamethoxam for acute exposures are 12.26 parts per billion (ppb) for surface water and 7.94 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are 1.29 ppb for surface water and 7.94 ppb for ground water.

The registrant has conducted small-scale prospective ground water studies in several locations in the United States to investigate the mobility of thiamethoxam in a vulnerable hydrogeological setting. A review of those data shows that generally residues of thiamethoxam, as well as CGA-322704, are below the limit of quantification (0.05 ppb). When quantifiable residues are found, they are sporadic and at low levels. The maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for CGA-322704. These values are well below the modeled estimates summarized in this unit, indicating that the modeled estimates are, in fact, protective of what actual exposures are likely to be.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For both acute and chronic dietary risk assessments for thiamethoxam, the upper-bound EDWC value of 12.26 ppb was used to assess the contribution to drinking water.

Clothianidin is not a significant degradate of thiamethoxam in surface or ground water sources of drinking water. Clothianidin drinking water residues only result from uses of clothianidin. The acute EDWC value of 7.3 ppb for clothianidin was incorporated into the acute dietary assessment and the chronic EDWC value of 5.9 ppb for clothianidin was incorporated into the chronic dietary assessment.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiamethoxam is currently registered for the following uses that could result in residential exposures: Turfgrass on golf courses, residential lawns, commercial grounds, parks, playgrounds, athletic fields, landscapes, interiorscapes and sod farms. EPA assessed residential exposure using the following assumptions:

Thiamethoxam is registered for use on turfgrass on golf courses, residential lawns, commercial grounds, parks, playgrounds, athletic fields, landscapes, interiorscapes and sod farms. Thiamethoxam is applied by commercial applicators only. Therefore, exposures resulting from homeowner applications were not assessed. However, entering areas previously treated with thiamethoxam could lead to exposures for adults and children. As a result, risk assessments have been completed for postapplication scenarios. Short-term exposures (1 to 30 days of continuous exposure) may occur as a result of activities on treated turf. There are no use patterns for thiamethoxam that indicate intermediate-term (1 to 6 months of continuous exposure) or chronic non-dietary exposures are likely to occur.

Dermal exposures were assessed for adults and children. Oral non-dietary ingestion exposures (i.e. soil ingestion, and hand-/object-to-mouth) were assessed for children as well. Since all postapplication scenarios occur outdoors the potential for inhalation exposure is negligible and therefore does not require an inhalation exposure assessment. For purposes of this assessment, exposure from residential lawns is used to represent the worst case scenario for both dermal and oral postapplication exposure.

Postapplication dermal exposure resulting from contact with treated turf was assessed using the EPA's Standard Operating Procedures for Residential Exposure and a chemical-specific turf transfer residue study.

Thiamethoxam use on turf does not result in significant residues of clothianidin. In addition, clothianidin residential and aggregate risks are not of concern. Refer to the final rule published in the **Federal Register** of February 6, 2008 (*http://www.epa.gov/fedrgstr/EPA-PEST/2008/February/Day-06/p1784.htm*).

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Thiamethoxam is a member of the neonicotinoid class of pesticides and produces, as a metabolite, another neonicotinoid, clothianidin. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same sequence of major biochemical events (EPA, 2002). Although clothianidin and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for clothianidin, thiamethoxam, and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nicotinic acetylcholine receptors, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors, which, in turn, confers the notably greater selective toxicity of

this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for thiamethoxam is based on unrelated effects in mammals, including effects on the liver, kidney, testes, and hematopoietic system. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (e.g., testicular tubular atrophy with thiamethoxam; mineralized particles in thyroid colloid with imidacloprid).

Thus, EPA has not found thiamethoxam or clothianidin to share a common mechanism of toxicity with any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that thiamethoxam and clothianidin do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. In the developmental studies, there is no evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses to *in utero* exposure to thiamethoxam. The developmental NOAELs are either higher than or equal to the maternal NOAELs. The toxicological effects in fetuses do not appear to be any more severe than those in the dams or does. In the rat developmental neurotoxicity study, there was no quantitative evidence of increased susceptibility.

There is evidence of increased quantitative susceptibility for male pups in two 2–generation reproductive studies. In one study, there are no toxicological effects in the dams whereas for the pups, reduced bodyweights are observed at the highest dose level, starting on day 14 of lactation. This contributes to an overall decrease in bodyweight gain during the entire lactation period. Additionally, reproductive effects in males appear in the F1 generation in the form of increased incidence and severity of testicular tubular atrophy. These data are considered to be evidence of increased quantitative susceptibility for male pups (increased incidence of testicular tubular atrophy at 1.8 milligrams/kilogram/day (mg/kg/day) when compared to the parents (hyaline changes in renal tubules at 61 mg/kg/day; NOAEL is 1.8 mg/kg/day).

In a more recent 2–generation reproduction study, the most sensitive effect was sperm abnormalities at 3 mg/kg/day (the NOAEL is 1.2 mg/kg/day) in the F1 males. This study also indicates increased susceptibility for the offspring for this effect.

Although there is evidence of increased quantitative susceptibility for male pups in both reproductive studies, NOAELs and LOAELs were established in these studies and the Agency selected the NOAEL for testicular effects in F1 pups as the basis for risk assessment. The Agency has confidence that the NOAEL selected for risk assessment is protective of the most sensitive effect (testicular effects) for the most sensitive subgroup (pups) observed in the toxicological database.

Due to the finding of quantitative sensitivity in the reproduction studies, the EPA conducted a degree of concern analysis to assess the residual uncertainties for prenatal and/or postnatal susceptibility. The Agency concluded that there is low concern for an increased susceptibility in the young given:

i. There was no increased sensitivity (qualitative or quantitative) in the rat developmental, rabbit developmental and rat developmental neurotoxicity studies;

ii. There was a clear NOAEL identified for the effects in pups in the rat reproduction studies where sensitivity was seen; and

iii. The Agency selected this NOAEL as the basis for risk assessment.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for thiamethoxam is largely complete, including acceptable/guideline developmental toxicity, 2–generation reproduction, and developmental neurotoxicity studies designed to detect adverse effects on the developing organism, which could result from the mechanism that may have produced the decreased alanine amino transferase levels.

The registrant must submit, as a condition of registration, an immunotoxicity study. This study is now required under 40 CFR part 158. The available data for thiamethoxam show the potential for immunotoxic effects, which are described in more detail below:

a. *Subchronic Dog - Leukopenia*. In the subchronic dog study, leukopenia (decreased white blood cells) was observed in females only, at the highest dose tested (HDT) of 50 mg/kg/day; the NOAEL for this effect was 34 mg/kg/day. The overall study NOAEL was 9.3 mg/kg/day in females (8.2 mg/kg/day in males) based on hematology and other clinical chemistry findings at the LOAEL of 34 mg/kg/day (32 mg/kg/day in males).

b. *Subchronic Mouse – Spleen weight changes*. In the subchronic mouse study, decreased spleen weights were observed in females at 626 mg/kg/day; the NOAEL for this effect was the next lowest dose of 231 mg/kg/day. The overall study NOAEL was 1.4 mg/kg/day (males) based on increased hepatocyte hypertrophy observed at the LOAEL of 14.3 mg/kg/day. The decreased absolute spleen weights were considered to be treatment related, but were not statistically significant at 626 mg/kg/day or at the HDT of 1,163 mg/kg/day. Since spleen weights were not decreased relative to body weights, the absolute decreases may have been related to the decreases in body weight gain observed at higher doses.

Overall, the Agency has a low concern for the potential for immunotoxicity related to these effects for the following reasons:

- In general, the Agency does not consider alterations in hematology parameters alone to be a significant indication of potential immunotoxicity. In the case of thiamethoxam, high-dose females in the subchronic dog study had slight microcytic anemia as well as leukopenia characterized by reductions in neutrophils, lymphocytes and monocytes; the leukopenia was considered to be related to the anemic response to exposure. Further, endpoints and doses selected for risk assessment are protective of the observed effects on hematology.
- Spleen weight decreases, while considered treatment-related, were associated with decreases in body

weight gain, and were not statistically significant. In addition, spleen weight changes occurred only at very high doses, more than 70 times higher than the doses selected for risk assessment.

Therefore, an additional 10x safety factor is not warranted at this time.

ii. For the reasons discussed in Unit III.D.2., there is low concern for an increased susceptibility in the young.

iii. Although there is evidence of neurotoxicity after acute exposure to thiamethoxam at doses of 500 mg/kg/day including drooped palpebral closure, decrease in rectal temperature and locomotor activity and increase in forelimb grip strength, no evidence of neuropathology was observed. These effects occurred at doses at least fourteen-fold and 416-fold higher than the doses used for the acute, and chronic risk assessments, respectively; thus, there is low concern for these effects since it is expected that the doses used for regulatory purposes would be protective of the effects noted at much higher doses.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on assumption that the maximum residues of thiamethoxam and clothianidin observed in the thiamethoxam field trials were remaining on crops. Although there is available information indicating that thiamethoxam and clothianidin have different toxicological effects in mammals and should be assessed separately, the residues of each have been combined in these assessments to ensure that the estimated exposures of thiamethoxam do not underestimate actual potential thiamethoxam exposures. An assumption of 100 PCT was made for all foods evaluated in the assessments. For both the acute and chronic assessments the acute EDWC of 12.26 ppb (0.0123 ppm) was used as a worst-case estimate of exposure via drinking water. Compared to the results from small-scale prospective ground water studies where the maximum observed residue levels from any monitoring well were 1.0 ppb for thiamethoxam and 0.73 ppb for CGA-322704, the modeled estimates are protective of what actual exposures are likely to be. Similarly conservative Residential SOPs as well as a chemical-specific turf transfer residue (TTR) study were used to assess post-application exposure to children and incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by thiamethoxam.

v. The FQPA safety factor for clothianidin has been retained as a 10x UFDB for the lack of a developmental immunotoxicity study. Refer to the final rule published in the **Federal Register** of February 6, 2008 (*http://www.epa.gov/fedrgstr/EPA-PEST/2008/February/Day-06/p1784.htm*).

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiamethoxam will occupy 3% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Acute dietary exposure from food and water to clothianidin is estimated to occupy 45% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thiamethoxam from food and water will utilize 42% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Similarly, chronic exposure to clothianidin from food and water will occupy 16% of the cPAD for children 1 to 2 years old. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of thiamethoxam and clothianidin is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiamethoxam is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term residential exposures for thiamethoxam. The level of concern for the margin of exposure (MOE) is 100 for aggregate short-term exposures (i.e., MOEs less than 100 indicate potential risks of concern). The level of concern for clothianidin MOEs is 1,000.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the aggregated short-term food, water, and residential exposures to thiamethoxam result in MOEs of 730 through 2,800 for all exposure scenarios for infants, children and adults. Aggregate MOEs associated with clothianidin range from 1,100 to 23,000.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiamethoxam is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to thiamethoxam or clothianidin through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. The Agency has classified thiamethoxam as not likely to be a human carcinogen based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse and that the carcinogenic effects are a result of a mode of action dependent on sufficient amounts of a hepatotoxic metabolite produced persistently. Thiamethoxam is not expected to pose a cancer risk. Clothianidin has been classified as a ''not likely to be a human carcinogen.'' It is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thiamethoxam or clothianidin residues.

**IV. Other Considerations**

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (high-performance liquid chromatography/ultraviolet (HPLC/UV) or mass spectrometry (MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

*B. International Residue Limits*

There are no CODEX or Mexican maximum residue limits (MRLs) for thiamethoxam. A number of Canadian MRLs exist for this chemical and are in accord with U.S. tolerances. The new/revised tolerances established by this rule have been derived using the NAFTA Tolerance Harmonization Spreadsheet.

*C. Revisions to Petitioned-For Tolerances*

Available field trial data support a tolerance for combined residues of thiamethoxam and CGA-322704 in/on citrus (group 10) at 0.40 ppm. Therefore, the proposed tolerance of 0.30 ppm should be raised to 0.40 ppm.

The data submitted with the petition support the proposed tolerance of 0.02 ppm for tree nuts (group 14). However, because the petitioner is seeking a tolerance to cover use on pistachios and pistachios are not, pending a proposed revision of the tree nut group definition, included in the tree nut group, a separate tolerance should be established for pistachio at 0.02 ppm.

The data supporting the petition indicate that combined residues of thiamethoxam and CGA-332704 may concentrate in dried citrus pulp. Therefore, a tolerance for citrus, dried pulp should be established and EPA has determined that the appropriate level is 0.60 ppm.

## V. Conclusion

Therefore, tolerances are established for combined residues of thiamethoxam, [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine], and its metabolite, CGA-322704 [*N*-(2-chloro-thiazol-5-ylmethyl)-*N*'-methyl-*N*'-nitro-guanidine], in or on nut, tree (crop group 14) at 0.02 ppm; almond, hulls at 1.2 ppm; fruit, citrus (crop group 10) at 0.40 ppm; citrus, dried pulp at 0.60 ppm; pistachio at 0.02 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

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

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2009.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.565 is amended by revising the introductory text in paragraph (a); removing the commodity ''pecan'' from the table in paragraph (a); alphabetically adding the following commodities to the table; and removing paragraph (b) and reserving the heading to read as follows:

**§ 180.565 Thiamethoxam; tolerances for residues.**

(a) *General.* A tolerance is established for the combined residues of the insecticide thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4 *H*-1,3,5-oxadiazin-4-imine] (CAS Reg. No. 153719–23–4) and its metabolite [*N*-(2-chloro-thiazol-5-ylmethyl) -*N'*-methyl- *N'*-nitro-guanidine], calculated as parent equivalents, in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Almond, hulls | 1.2 ppm |
| * * * * * | |
| Citrus, dried pulp | 0.60 ppm |
| * * * * * | |
| Fruit, citrus, group 10 | 0.40 ppm |
| * * * * * | |
| Nut, tree, group 14) | 0.02 ppm |
| * * * * * | |
| Pistachio | 0.02 ppm |
| * * * * * | |

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. E9–7966 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0361; FRL–8406–8]**

### Cyhalofop-butyl; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of cyhalofop-butyl, cyhalofop acid and the di-acid metabolite in or on rice, grain and rice, wild, grain. Interregional Research Project Number 4 (IR-4) and Dow AgroSciences, LLC, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also removes the expired, time-limited tolerances for residues of cyhalofop-butyl, cyhalofop acid and the di-acid metabolite in or on on rice, grain and rice, straw.

**DATES:** This regulation is effective April 8, 2009. Objections and requests for hearings must be received on or before June 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0361. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0361 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before June 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0361, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

#### II. Petition for Tolerance

In the **Federal Registers** of June 4, 2008 (73 FR 31862) (FRL–8365–3) and August 29, 2008 (73 FR 50963) (FRL–8379–2), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7341) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ, 08540; and a pesticide petition (PP 8F7403) by Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268, respectively. The petitions requested that 40 CFR 180.576 be amended by establishing tolerances for combined residues of the herbicide cyhalofop-butyl, R-(+)-n-butyl-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionate, plus cyhalofop acid, R-(+)-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionic acid) and the di-acid metabolite, (2R)-4-[4-(1-carboxyethoxy)phenoxy]-3-fluorobenzoic acid, in or on rice, grain (PP 8F7403) and rice, wild, grain (PP 8E7341) at 0.03 parts per million (ppm);

and in or on rice, straw at 8.0 ppm (8F7403). The notices referenced summaries of the petitions prepared by Dow AgroSciences, LLC, the registrant, which are available to the public in the dockets established for each action (PP 8E7341: Docket ID number EPA–HQ–OPP–2008–0361; and PP 8F7403: Docket ID number EPA–HQ–OPP–2008–0600) at *http://www.regulations.gov*. Comments were received on the notice of filing of PP 8F7403 (rice, grain). EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting these petitions and current Agency policy, EPA has determined that the proposed tolerance on rice, straw is unnecessary and should not be established. The reason for this change is explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of cyhalofop-butyl, cyhalofop acid and the di-acid metabolite on rice, grain and rice, wild, grain at 0.03 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Cyhalofop-butyl has low or minimal acute toxicity via the oral, dermal and inhalation routes of exposure. It is minimally irritating to the eye, non-irritating to the skin and is not a dermal sensitizer.

Kidney effects were observed after subchronic and chronic dosing of the rat and mouse as well as in the rabbit developmental and rat reproduction studies. In the 90–day rat study, lipofuscin pigment deposition in proximal tubule kidney cells was noted in both sexes in addition to hepatocyte eosinophilic granules (males only); and in the 90–day mouse study (females only), there was an increase in absolute and relative kidney weights as well as swelling of the proximal tubule cells. In the rabbit developmental study, 1/18 dams in the mid-dose group and 9/18 dams in the high-dose group died or were sacrificed *in extremis* after exhibiting hematuria (gross pathological examinations revealed cloudy or dark colored kidneys). Slight kidney tubular cell swelling was observed only in adult males in the rat reproductive toxicity study. In the 18–month mouse carcinogenicity study, kidney findings included tubular dilatation, chronic glomerulonephritis and hyaline casts in females (not males). In both sexes in the chronic/carcinogenicity rat study increased deposition of kidney changes (early and increased deposition of the pigments lipofuscin and hemosiderin in the renal proximal tubular cells) was observed. In addition, in females only, renal mineralization was observed.

Non-kidney effects observed following subchronic or chronic exposure to cyhalofop-butyl included hyperplasia of the stomach mucosal epithelium (male mice only) in the 18–month mouse carcinogenicity study and brown and/or atrophied thymuses and decreased thymus weight in the 90–day dog study. The thymus effects, which could be an indication of potential immunotoxicity, were not observed in the 1–year dog study or in other species (rats, mice or rabbits) and were not seen in any tested species following chronic exposure to cyhalofop-butyl.

There was no evidence of developmental, reproductive or endocrine toxicity in the toxicology studies for cyhalofop-butyl. In the rat developmental toxicity study, there were no maternal or fetal effects observed up to the limit dose. In the rabbit developmental toxicity study, no fetal effects were observed up to the limit dose; whereas kidney effects (deaths related to hematuria and the occurrence of cloudy or dark colored kidneys on gross pathological examination) were seen in maternal animals. Slight kidney tubular cell swelling was observed in adult males in the rat reproductive toxicity study with no evidence of treatment-related effects observed in females or offspring.

There were no systemic or neurotoxic effects noted at the limit dose in the gavage acute neurotoxicity study or in the 90–day feeding neurotoxicity study.

In a previous 2002 risk assessment for cyhalofop-butyl, it was not possible to assess the carcinogenic potential of cyhalofop-butyl due to insufficient dosing in the rat and mouse carcinogenicity studies. In the absence of acceptable data, EPA assumed that cyhalofop-butyl had the same carcinogenic potential as the structural analog, diclofop-methyl, and conducted an exposure asssessment to evaluate cancer risk using quantitative linear low-dose extrapolation and the Q1* for diclofop-methyl of $2.3 \times 10^{-1}$ (mg/kg/day)$^{-1}$. Subsequently, two specific mechanistic studies (Peroxisome Proliferator Receptor-Alpha Reporter Assays (PPARά)) in the mouse were submitted to EPA. Review of the mechanistic data indicated that cyhalofop-butyl is not a liver toxicant/carcinogen for humans, since the PPARά rodent liver mode of action is not likely to occur in humans; and that the doses in the original long-term studies were approaching a maximum tolerated dose. In addition, there were no positive effects in the battery of mutagenic studies. Based on these findings, EPA has classified cyhalofop-butyl as ''Not Likely to be Carcinogenic to Humans.''

Specific information on the studies received and the nature of the adverse effects caused by cyhalofop-butyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Cyhalofop-butyl: Human Health Risk Assessment for Proposed Uses on Wild Rice and A Proposed Amended Labeling for Clincher® SF Herbicide,* page 30 in docket ID number EPA–HQ–OPP–2008–0361.

### *B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for

derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles, EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for cyhalofop-butyl used for human risk assessment can be found at *http://www.regulations.gov* in the document *Cyhalofop-butyl: Human Health Risk Assessment for Proposed Uses on Wild Rice and A Proposed Amended Labeling for Clincher® SF Herbicide*, page 16 in docket ID number EPA–HQ–OPP–2008–0361.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to cyhalofop-butyl, EPA considered exposure under the petitioned-for tolerances. There are no other tolerances in effect for cyhalofop-butyl. EPA assessed dietary exposures from cyhalofop-butyl in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for cyhalofop-butyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that all rice and wild rice commodities would be treated with cyhalofop-butyl and contain tolerance-level residues.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, and mechanistic studies in mice, EPA classified cyhalofop-butyl as ''Not Likely to be Carcinogenic To Humans;'' therefore, an exposure assessment for evaluating cancer risk is not needed for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for cyhalofop-butyl. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyhalofop-butyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyhalofop-butyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Tier I Rice model and Screening Concentration in Ground Water (SCI-GROW) model, the estimated drinking water concentrations (EDWCs) of cyhalofop-butyl for chronic exposures for non-cancer assessments (the only dietary exposure scenario for which a toxicological endpoint of concern was identified) are estimated to be 21 parts per billion (ppb) for surface water and 0.152 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 21 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyhalofop-butyl is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found cyhalofop-butyl to share a common mechanism of toxicity with any other substances, and cyhalofop-butyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyhalofop-butyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for cyhalofop-butyl includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. There were no treatment-related effects observed in fetuses or offspring in any of these studies.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF

were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for cyhalofop-butyl is complete, except for immunotoxicity data, and EPA has determined that an additional uncertainty factor is not required to account for potential immunotoxicity. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement is relatively new, these data are not yet available for cyhalofop-butyl. In the absence of specific immunotoxicity studies, EPA has evaluated the available cyhalofop-butyl toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity.

Brown and/or atrophied thymuses and decreased thymus weight were observed in the 90–day dog study. However, these effects, which could be an indication of potential immunotoxicity, were not observed in the 1–year dog study or in other species (rats, mice or rabbits) and were not seen in any tested species following chronic exposure to cyhalofop-butyl. Based on these considerations, EPA has concluded that the doses and endpoints selected for risk assessment (along with traditional uncertainty factors) are protective of potential immunotoxicity and an additional uncertainty factor is not needed.

ii. There is no indication that cyhalofop-butyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that cyhalofop-butyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in offspring in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed assuming 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyhalofop-butyl in drinking water. Residential exposure of infants and children is not expected. These assessments will not underestimate the exposure and risks posed by cyhalofop-butyl.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, cyhalofop-butyl is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyhalofop-butyl from food and water will utilize 15% of the cPAD for infants, less than 1–year old, the population group receiving the greatest exposure. There are no residential uses for cyhalofop-butyl.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyhalofop-butyl is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to cyhalofop-butyl through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyhalofop-butyl is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to cyhalofop-butyl through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Cyhalofop-butyl is classified as ''not likely to be carcinogenic to humans'' and is, therefore, not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyhalofop-butyl residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (Gas Chromatography/Mass Spectrometry (GC/MS) Method GRM 99.06) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

There are no CODEX, Canadian or Mexican maximum residue limits (MRLS) established for cyhalofop-butyl on the commodities associated with these petitions.

### *C. Response to Comments*

An anonymous citizen objected to the presence of any pesticide residues on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) contemplates that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

### *D. Revisions to Petitioned-For Tolerances*

Dow AgroSciences proposed a tolerance for residues of cyhalofop-butyl on rice, straw. EPA recently concluded that rice straw is not a significant livestock feed item. Insignificant livestock feed items are considered covered by the tolerance for the raw agricultural commodity with which they are associated (62 FR 66020; December 17, 1997). Therefore, the proposed tolerance on rice, straw is unnecessary and is not being established.

## V. Conclusion

Therefore, tolerances are established for combined residues of cyhalofop-

butyl, R-(+)-n-butyl-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionate, plus cyhalopfop acid, R-(+)-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionic acid) and the di-acid metabolite, (2R)-4-[4-(1-carboxyethoxy)phenoxy]-3-fluorobenzoic acid, in or on rice, grain and rice, wild, grain at 0.03 ppm.

### VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

### VII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.576 is amended by revising the table in paragraph (a) to read as follows:

**§ 180.576 Cyhalofop-butyl; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| Rice, grain | 0.03 |
| Rice, wild, grain | 0.03 |

* * * * *

[FR Doc. E9–7990 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2008–0272; FRL–8406–6]**

## Spiromesifen; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents, in or on pop corn grain and stover. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). In addition, this regulation establishes tolerances for sweet corn, kernel, stover, and forage; and berry, lowgrowing, subgroup 13G. Interregional Research Project No. 4 (IR-4) requested these tolerances under the FFDCA. Additionally, the existing tolerance for strawberry is being deleted because it is superseded by the tolerances established for low growing berry subgroup 13–07G. Also, the tolerances for milk fat and meat byproducts of cattle, goats, horses, and sheep are being increased.In addition, this action establishes time-limited tolerances for the combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents, in or on soybean commodities in response to the approval of a specific exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing the use of spiromesifen on soybeans to control spider mites. The time-limited tolerances expire and are revoked on December 31, 2011.

**DATES:** This regulation is effective April 8, 2009. Objections and requests for hearings must be received on or before June 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION)**.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0272. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Gaines, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5967; e-mail address: *gaines.jennifer@epa.gov.* Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0272 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before June 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0272, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Petition for Tolerance

In the **Federal Register** of May 16, 2008 (73 FR 28462) (FRL–8361–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7340) by Interregional Research Project Number 4 (IR-4), Rutgers, The State University of NJ, 500 College Road East, Suite 201 W. Princeton, NJ 08540. The petition requested that 40 CFR 180.607 be amended by establishing tolerances for combined residues of the insecticide spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents, in or on corn, sweet, kernel plus cob with husks removed at 0.02 parts per million (ppm); corn, sweet, forage at 6.0 ppm, corn, sweet, stover at 7.0 ppm, berry and small fruit, low growing berry, subgroup 13–07G at 2.0 ppm and delete existing tolerance for strawberry at 2.0 ppm since residues of spiromesifen on strawberry will be covered by the tolerance proposed for berry and small fruit, low growing berry, subgroup. That notice referenced a summary of the petition prepared by IR-4 the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

In the **Federal Register** of November 5, 2008 (73 FR 65851) (FRL–8385–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7338) by Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.607 be amended by establishing tolerances for combined residues of the insecticide spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents, in or on pop corn grain at 0.02 ppm and pop corn stover at 1.5 ppm. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the tolerances on corn, sweet, forage; corn, sweet, stover; and berry and small fruit, low growing berry, subgroup 13–07G. The Agency has also determined from the residue data on the new uses that the tolerances for meat, byproducts of cattle, goats, horses, and sheep, and milk, fat need to be raised. The reason for these changes are explained in Unit IV.D.

EPA is also establishing time-limited tolerances for residues of spiromesifen in or on soybean at 0.02 ppm; soybean, forage at 30 ppm; and soybean, hay at 86 ppm. These tolerances expire and are revoked on December 31, 2011. The Agency is establishing these time-limited tolerances in response to a specific exemption request under FIFRA section 18 on behalf of the Delaware Department of Agriculture for emergency use of spiromesifen on soybeans to control spider mites.

According to the applicant, decreasing effectiveness of the available controls, coupled with season-long dry weather conducive to mite development, led to spider mite levels in soybean fields that were well above levels which would cause crop damage leading to significant economic losses. In the most heavily infested areas, significant yield losses of 50–70% were expected. Thus the applicant requested use of spiromesifen to address this emergency pest situation.

As part of its assessment of the emergency exemption request, EPA assessed the potential risks presented by the residues of spiromesifen in or on these soybean commodities. In doing so, EPA considered the safety standard in section 408 (b) (2) of the FFDCA, and EPA decided that the necessary time-limited tolerances under section 408 (1) (6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address the urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these time-limited tolerances without notice and opportunity for public comment as provided in section 408 (1) (6) of the FFDCA. Although, these time-limited tolerances expire and are revoked on December 31, 2011, under section 408 (1) (5) of the FFDCA, residues of the pesticide not in excess of the amount specified in the tolerances remaining in or on soybeans, soybean hay, or soybean forage after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data, or other relevant information on this pesticide indicates that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether spiromesifen meets EPA's registration requirements for use on soybean or whether a permanent tolerance for this use would be appropriate. Under this circumstance, EPA does not believe that the time-limited tolerances serve as a basis for registration of spiromesifen by a State for special local needs under FIFRA section 24(c). Nor do the time-limited tolerances serve as the basis for any State other than Delaware to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for spiromesifen, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents, on corn, sweet, forage at 6.0 ppm; corn, sweet, kernel plus cob with husks removed at 0.02 ppm; corn, sweet, stover at 7.0 ppm; pop corn grain at 0.02 ppm; pop corn stover at 1.5 ppm; soybean at 0.02 ppm; soybean, forage at 30 ppm; soybean, hay at 86 ppm; and berry and small fruit, low growing berry, subgroup 13-07G at 2.0 ppm. In addition, the available residue chemistry, toxicology or occupational databases supports the tolerances for milk, fat at 0.25 ppm; and meat, byproducts of cattle, goats, horses, and sheep at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Spiromesifen shows low acute toxicity via the oral, dermal and inhalation routes of exposure. It was neither an eye nor dermal irritant, but showed moderate potential as a contact sensitizer in a Magnusson and Kligman maximization assay. In short-term and long-term animal toxicity tests, the critical effects observed were loss of body weight, adrenal effects (discoloration, decrease in fine vesiculation, and the presence of cytoplasmic eosinophilia in zona fasciculata cells), thyroid effects (increased thyroid stimulating hormone, increased thyroxine binding capacity, decreased $T_3$ and $T_4$ levels, colloidal alteration and thyroid follicular cell hypertrophy), liver effects (increased alkaline phosphatase, ALT and decreased cholesterol, triglycerides), and spleen effects (atrophy, decreased spleen cell count, and increased macrophages). Spiromesifen shows no significant developmental or reproductive effects, is not likely to be carcinogenic based on bioassays in rat and mouse, and lacks *in vivo* and *in vitro* mutagenic effects. Spiromesifen is not considered a neurotoxic chemical based on the chemical's mode of action

and the available data from multiple studies, including acute and subchronic neurotoxicity studies.

Specific information on the studies received and the nature of the adverse effects caused by spiromesifen as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Spiromesifen: Human-Health Risk Assessment for Proposed Section 3 Uses on Pop Corn, Sweet Corn, Low-Growing Berry Subgroup; and Section 18 Emergency Exemption Use on Soybean*, pages 17–25 in docket ID number EPA–HQ–OPP–2008–0272 and memo, D300469, February 17, 2005.

*B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for spiromesifen used for human risk assessment can be found at *http://www.regulations.gov* in document *Spiromesifen: Human-Health Risk Assessment for Proposed Section 3 Uses on Pop Corn, Sweet Corn, Low-Growing Berry Subgroup; and Section 18 Emergency Exemption Use on Soybean*, page 25 in docket ID number EPA–HQ–OPP–2008–0272.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to spiromesifen, EPA considered exposure under the petitioned-for tolerances as well as all existing spiromesifen tolerances in (40 CFR 180.607). EPA assessed dietary exposures from spiromesifen in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for spiromesifen; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues for all commodities except for the leafy-green and leafy-Brassica vegetable subgroups (4A and 5B). The tolerance values for leafy vegetables were adjusted upward to account for the metabolite BSN 2060-4-hydroxymethyl (free and conjugated), which is a residue of concern in leafy vegetables for risk assessment purposes only. EPA used data from the metabolism studies to create a tolerance-equivalent value for the parent spiromesifen and the BSN 2060-4-hydroxymethyl metabolite to estimate residues in leafy vegetables. DEEM 7.81 default processing factors and 100 percent crop treated (PCT) were assumed for all commodities.

iii. *Cancer*. Due to no evidence of carcinogenic effects in the submitted rat and mouse cancer studies, spiromesifen has been classified as ''not likely to be carcinogenic to humans.'' Therefore, an exposure assessment to evaluate cancer risk was not performed.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for spiromesifen. Tolerance level residues were used for all food commodities except for the leafy-green and leafy-Brassica vegetable subgroups (4A and 5B). For these subgroups, the residue values were adjusted to account for the metabolite BSN 2060-4-hydroxymethyl (free and conjugated), which is a residue of concern in leafy vegetables for risk assessment purposes only. 100 PCT was assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for spiromesifen in drinking water. Because the Agency does not have comprehensive monitoring data, the Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spiromesifen in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spiromesifen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Parent spiromesifen is not likely to persist in the environment as it readily undergoes both biotic and abiotic degradation; however, its primary degradate BSN2060-enol is expected to persist. While parent spiromesifen strongly sorbs to sediment and is not likely to be mobile, its major degradates, BSN2060-enol and BSN2060-carboxy, do not sorb to sediment and are expected to leach into ground water. Spiromesifen has limited solubility in water (130 µg/L at 25°C) and in some cases has been reported to have a practical solubility of 40 to 50 µg/L. The pesticide degrades primarily through aerobic soil metabolism and hydrolysis; however, in clear shallow water it will ready undergo photolysis. Field studies indicate that spiromesifen readily dissipates with field dissipation half-lives ranging from 2 to 10 days.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of spiromesifen for chronic exposure are 188 parts per billion (ppb) for surface water and 86 ppb for ground water. For chronic dietary risk assessment, the water concentration of value 188 ppb was used to assess the contribution to drinking water. Modeled estimates of drinking water concentrations were

directly entered into the dietary exposure model.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Spiromesifen is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found spiromesifen to share a common mechanism of toxicity with any other substances, and spiromesifen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that spiromesifen does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to spiromesifen. In the prenatal developmental toxicity studies in rats and rabbits and in the 2-generation reproduction study in rats, developmental toxicity to the offspring occurred at equivalent or higher doses than parental toxicity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for spiromesifen is complete and no additional immunotoxicity of neurotoxicty testing is required. The rationale is described in this Unit:

a. Because spleen effects were seen in several toxicity studies, the registrant pursued specialized immunotoxicity studies in rats and mice that were both negative. These studies satisfy the revised part 158 requirement for immunotoxicity testing. In addition, the endpoints selected for the risk assessment are considered protective of any possible immunotoxic effects.

b. There is no concern for neurotoxicity resulting from exposure to spiromesifen. Neurotoxic effects such as reduced motility, spastic gait, increased reactivity, tremors, clonic-tonic convulsions, reduced activity, labored breathing, vocalization, avoidance reaction, piloerection, limp, cyanosis, squatted posture, and salivation were observed in two studies (5-day inhalation and subchronic oral rat) at high doses (134 and 536 milligrams/kilogram/day (mg/kg/day), respectively). These effects were neither reflected in neurohistopathology nor in other studies. Because these effects were not observed in the acute and subchronic neurotoxicity studies, they were not considered reproducible. Thus, based on the chemical's mode of action and the available data from multiple studies, the chemical is not considered neurotoxic.

ii. There is no evidence that spiromesifen results in increased susceptibility *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. A developmental neurotoxicity study is not required.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to spiromesifen in drinking water. These assessments will not underestimate the exposure and risks posed by spiromesifen.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, an acute aggregate exposure assessment was not conducted.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spiromesifen from food and water will utilize 77% of the cPAD for (all infants <1 year old) the population group receiving the greatest exposure.

3. *Short-term risk and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Spiromesifen is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to spiromesifen through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. Spiromesifen has been classified as ''not likely to be carcinogenic to humans.'' Spiromesifen is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to spiromesifen residues.

## IV. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology high-performance liquid chromatography/mass spectroscopy (HPLC/MS/MS)/Method 00631/M001) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### B. International Residue Limits

No Codex, Canadian, or Mexican MRLs have been established for residues of spiromesifen and its metabolites on the requested crops.

### C. Response to Comments

One comment was received from a private citizen who opposed the authorization to sell to any pesticide that leaves a residue on food. The Agency has received this same comment from this commenter on numerous previous occasions and rejects it for the reasons previously stated in the **Federal Register** of January 7, 2005 (70 FR 1349) (FRL–7691–4.)

### D. Revisions to Petitioned-For Tolerances

1. Corn, sweet, forage; corn, sweet, stover; corn, pop, grain; corn, pop, stover; and berry, lowgrowing, subgroup 13G: Using the North American Free Trade Agreement (NAFTA) Maximum Residue Limit (MRL) Tolerance Harmonization Workgroup methodology for evaluating field trial data, the Agency determined that the following modifications to the requested tolerances should be made: Corn, sweet, forage proposed at 6.0 ppm should be 17 ppm; and corn, sweet, stover proposed at 7.0 ppm should be 12 ppm. Additionally, the terminology should be corrected for berry and small fruit, low growing berry, subgroup 13-07G.2.

2. Meat, byproducts of cattle, goats, horses, and sheep; milk, fat: The Agency has also determined from the residue data on the new uses, the newly calculated maximum reasonable dietary burden for dairy cattle, and the reside data from an available ruminant feeding study, it is appropriate to raise the tolerances for meat, byproducts of cattle, goats, horses, and sheep to 0.20 ppm; and to raise the tolerance for milk, fat to 0.25 ppm.

## V. Conclusion

Therefore, tolerances are established for combined residues of insecticide spiromesifen (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents, in or on corn, sweet, kernel plus cob with husks removed at 0.02 ppm; corn, sweet, forage at 17 ppm; corn, sweet, stover at 12 ppm; berry and small fruit; berry, lowgrowing, subgroup 13G at 2.0 ppm and delete existing tolerance for strawberry at 2.0 ppm since residues of spiromesifen on strawberry will be covered by the tolerance proposed for berry and small fruit, low growing berry, subgroup. In addition, this regulation establishes time-limited tolerances for residues of spiromesifen and its enol metabolite, in or on soybeans at 0.02 ppm; soybean, forage at 30 ppm; and soybean, hay at 86 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2009.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.607 is amended as follows:

■ i. In paragraph (a)(1), in the table, by removing the commodity strawberry and alphabetically adding the following commodities;

■ ii. In paragraph (a)(2), in the table, by revising the tolerance level for cattle, meat byproducts; goat, meat by products; horse, meat byproducts; milk, fat; and sheep, meat byproducts; and

■ iii. By adding paragraph (b).

The amendments read as follows:

**§ 180.607 Spiromesifen; tolerances for residues.**

(a) *General.* (1) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Berry and small fruit, low growing berry, subgroup 13-07G | 2.0 |
| * * * * * | |
| Corn, pop, grain | 0.02 |
| Corn, pop, stover | 4.0 |
| Corn, sweet, forage | 17 |
| Corn, sweet, kernel plus cob with husks removed | 0.02 |
| * * * * * | |
| Corn sweet, stover | 12 |
| * * * * * | |

(2) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Cattle, meat byproducts | 0.20 |
| * * * * * | |
| Goat, meat byproducts | 0.20 |
| * * * * * | |
| Horse, meat byproducts | 0.20 |
| * * * * * | |
| Milk, fat | 0.25 |
| * * * * * | |
| Sheep, meat byproducts | 0.20 |

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for combined residues of spiromesifen, (2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate) and its enol metabolite (4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one), calculated as the parent compound equivalents in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FFIFRA section 18 emergency exemptions. The tolerances expire and are revoked on the date specified in the table.

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Soybean, seed | 0.02 | 12/31/11 |
| Soybean, forage | 30 | 12/31/11 |
| Soybean, hay | 86 | 12/31/11 |

[FR Doc. E9–7820 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 0810141351–9087–02]**

**RIN 0648–XN17**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Vessels in the Bering Sea and Aleutian Islands Trawl Limited Access Fishery in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch for vessels participating in the Bering Sea and Aleutian Islands (BSAI) trawl limited access fishery in the Central Aleutian District of the BSAI. This action is necessary to prevent exceeding the 2009 Pacific ocean perch total allowable catch (TAC) specified for vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 21, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

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

The 2009 Pacific ocean perch TAC allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI is 379 metric tons as established by the 2009 and 2010 final harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2009 Pacific ocean perch TAC allocated to vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch for vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### 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 closure of Pacific ocean perch for vessels participating in the BSAI trawl limited access fishery in the Central Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 19, 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 § 679.20 and § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: April 2, 2009.

**Kristen C. Koch,**

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

[FR Doc. E9–7854 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 74, No. 66
Wednesday, April 8, 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.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM399 Special Conditions No. 25–09–02–SC]**

## Special Conditions: Boeing Model 747–8/–8F Airplane, Additional Airframe Structural Design Requirements Related to Sudden Engine Stoppage Due to Fan Blade Failures

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This document proposes special conditions for the Boeing Model 747–8/–8F airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include larger engines with large bypass fans capable of producing much larger and more complex dynamic loads. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing 747–8/–8F airplanes.

**DATES:** Comments must be received on or before May 26, 2009.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM399, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM399. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mark Freisthler, FAA, Airframe & Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1119; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

### Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA, 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane and the new Model 747–8F freighter airplane. The Model 747–8 and the Model 747–8F are derivatives of the 747–400 and the 747–400F, respectively. Both the Model 747–8 and the Model 747–8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 970,000 pounds and new General Electric GEnx –2B67 engines. The Model 747–8 will have two flight crew and the capacity to carry 660 passengers. The Model 747–8F will have two flight crew and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries.

### Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 747–8 and 747–8F airplanes (hereafter referred as 747–8/–8F) meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8/–8F.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these proposed special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these model airplanes.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–8/–8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747–8/–8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special

conditions would also apply to the other model under § 21.101.

**Novel or Unusual Design Features**

The Boeing Model 747–8/–8F airplane will incorporate the following novel or unusual design features: high-bypass engines with a fan diameter approximately twelve percent greater than those currently installed on other Boeing Model 747 airplanes.

**Discussion**

High-bypass engines with a fan diameter approximately twelve percent greater than those currently installed on other Boeing Model 747 airplanes, such as the 747–400 series were not envisioned when § 25.361 was adopted in 1965. Section 25.361 addresses loads imposed by engine seizure. Because of the higher inertia of the rotating components, worst case engine seizure events become increasingly more severe with increasing engine size.

Typically the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer. These loads are used by the airframe manufacturer as limit loads. Section 25.305 requires that supporting structure be able to support limit loads without detrimental permanent deformation, meaning that supporting structure should remain serviceable after a limit load event. Limit loads are expected to occur about once in the lifetime of any airplane. For turbine engine installations, § 25.361(b)(1) requires that the engine mounts and supporting structures be designed to withstand a ''limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.''

Since § 25.361(b)(1) was adopted the size, configuration, and failure modes of turbine engines have changed significantly. Current engines are much larger and are designed with large bypass fans. In the failure event prescribed by § 25.361 they produce much higher transient loads on the engine mounts and supporting structure than previous designs. At the same time, the likelihood of such an event occurring in modern engines has become less. The service history of modern turbine engines shows that engine seizures are rare events, much less than what is typically expected for ''limit'' loads. While it is important for the airplane to be able to support such rare loads safely without failure, it is unrealistic to expect that no permanent deformation will occur.

Given this situation, the Aviation Rulemaking Advisory Committee (ARAC) has proposed a design standard for today's large engines. For the commonly occurring deceleration events, the proposed standard would require engine mounts and structures to support maximum torques without detrimental permanent deformation. For the rare-but-severe engine seizure events such as loss of any fan, compressor, or turbine blade, the proposed standard would require engine mounts and structures to support maximum torques without failure, but allow for some deformation in the structure.

The FAA concludes that modern large engines, including those on the 747–8/–8F, are novel and unusual compared to those envisioned when § 25.361(b)(1) was adopted and thus warrant special conditions. These proposed special conditions contain design criteria recommended by ARAC.

**Applicability**

As discussed above, these proposed special conditions are applicable to Boeing Model 747–8/–8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action affects only certain novel or unusual design features of the Boeing Model 747–8/–8F airplanes. It is not a rule of general applicability.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed Special Conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the 747–8/–8F airplanes.

In lieu of § 25.361(b) the following special conditions are proposed:

1. For turbine engine installations, the engine mounts, pylons and supporting airframe primary structure (such as the affected wing and fuselage primary structure) must be designed to withstand 1g level flight loads acting simultaneously with the maximum torque load, considered as limit load, imposed by each of the following:

(a) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust; and

(b) The maximum acceleration of the engine.

2. For auxiliary power unit installations, the power unit mounts and supporting airframe primary structure (such as the affected fuselage primary structure) must be designed to withstand 1g level flight loads acting simultaneously with the maximum torque load, considered as limit load, imposed by each of the following:

(a) Sudden auxiliary power unit deceleration due to malfunction or structural failure; and

(b) The maximum acceleration of the power unit.

3. For turbine engine installations, the engine mounts, pylons and supporting airframe primary structure (such as the affected wing and fuselage primary structure) must be designed to withstand 1g flight loads acting simultaneously with the transient dynamic loads, considered as ultimate load, imposed by each of the following:

(a) Sudden engine stoppage due to the loss of any fan, compressor, or turbine blade; and separately

(b) Where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3(a) and 3(b) are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to the supporting airframe primary structure (such as the affected wing and fuselage primary structure). In addition, the airplane must be capable of continued safe flight considering the aerodynamic effects on controllability due to any permanent deformation that results from the conditions specified in paragraph 3, above.

Issued in Renton, Washington, on January 22, 2009.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–7909 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

**[Docket No. NM400 Special Conditions No. 25–09–03–SC]**

## Special Conditions: Boeing Model 747–8/–8F Airplane, Interaction of Systems and Structures

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Boeing Model 747–8/–8F airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include their effects on the structural performance. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing 747–8/–8F airplanes.

**DATES:** Comments must be received on or before May 26, 2009.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM400, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM400. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mark Freisthler, FAA, Airframe & Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1119; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

### Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane and the new Model 747–8F freighter airplane. The Model 747–8 and the Model 747–8F are derivatives of the 747–400 and the 747–400F, respectively. Both the Model 747–8 and the Model 747–8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 970,000 pounds and new General Electric GEnx–2B67 engines. The Model 747–8 will have two flight crew and the capacity to carry 660 passengers. The Model 747–8F will have two flight crew and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries.

### Type Certification Basis

Under the provisions of § 21.101, Boeing must show that Models 747–8 and 747–8F (hereafter referred as 747–8/–8F) meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8/–8F.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these proposed special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these model airplanes.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–8/–8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747–8/–8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

### Novel or Unusual Design Features

The Boeing Model 747–8/8F is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems represent a novel and unusual feature when compared to the technology envisioned in the current airworthiness standards. A special condition is needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state.

This special condition requires that the airplane meet the structural requirements of subparts C and D of 14 CFR part 25 when the airplane systems are fully operative. The special condition also requires that the airplane meet these requirements considering failure conditions. In some cases,

reduced margins are allowed for failure conditions based on system reliability.

**Applicability**

As discussed above, this proposed special condition is applicable to Boeing Model 747–8/–8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, this proposed special condition would apply to that model as well under the provisions of § 21.101.

**Conclusion**

This action affects only certain novel or unusual design features of the Boeing Model 747–8/–8F airplanes. It is not a rule of general applicability.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for this proposed Special Condition is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for the 747–8/–8F airplanes.

*A. General*

The Boeing Model 747–8/8F airplane is equipped with automatic control systems that affect the airplane's structural performance, either directly or as a result of a failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of Subparts C and D of part 25. The following criteria must be used for showing compliance with this proposed special condition for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance. If this proposed special condition is used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined here only address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structural elements whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in this proposed special condition.

2. Depending on the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this proposed special condition in order to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

3. The following definitions are applicable to this proposed special condition.

(a) Structural performance: Capability of the airplane to meet the structural requirements of part 25.

(b) Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the Airplane Flight Manual (AFM) (e.g., speed limitations, avoidance of severe weather conditions, etc.).

(c) Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload and Master Minimum Equipment List (MMEL) limitations).

(d) Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this proposed special condition are the same as those used in § 25.1309.

(e) Failure condition: The term failure condition is the same as that used in § 25.1309, however this proposed special condition applies only to system failure conditions that affect the structural performance of the airplane (*e.g.*, system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins). The system failure condition includes consequential or cascading effects resulting from the first failure.

*B. Effects of Systems on Structures*

1. General. The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structural elements.

2. System fully operative. With the system fully operative, the following apply:

(a) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(b) The airplane must meet the strength requirements of part 25 (i.e., static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

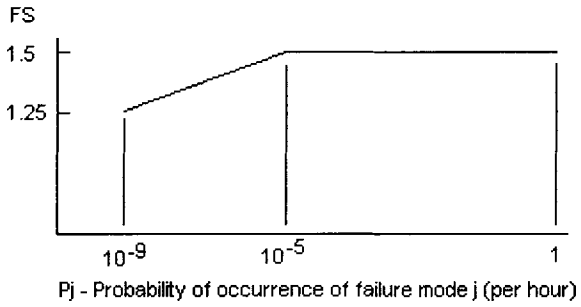
(c) The airplane must meet the aeroelastic stability requirements of § 25.629.

3. System in the failure condition. For any system failure condition not shown to be extremely improbable, the following apply:

(a) At the time of occurrence, starting from 1-g level flight conditions, a realistic scenario including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(1) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 1.

Figure 1
factor of safety at the time of occurrence




(2) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph 3(a)(1). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(3) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond $V_C/M_C$, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(4) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of the affected structural elements.

(b) For continuation of flight, for an airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(1) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to $V_C/M_C$, or the speed limitation prescribed for the remainder of the flight, must be determined:

(i) The limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

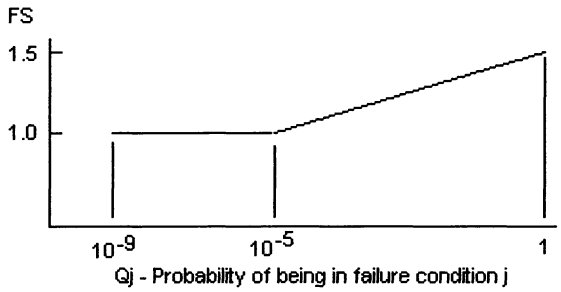
(ii) The limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(iii) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

(iv) The limit yaw maneuvering conditions specified in § 25.351. The limit ground loading conditions specified in §§ 25.473, 25.491 and 25.493.

(2) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (3)(b)(1) of the proposed special condition multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight




$Q_j = (T_j)(P_j)$ where:

$T_j$ = Average time spent in failure condition j (in hours)

$P_j$ = Probability of occurrence of failure mode j (per hour)

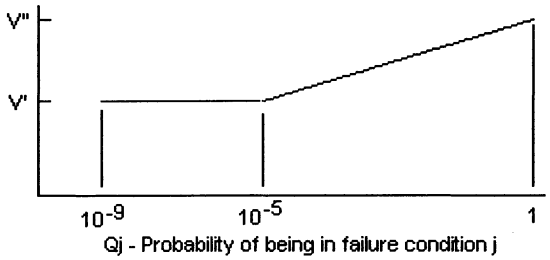
Note: If $P_j$ is greater than $10^{-3}$ per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in Subpart C.

(3) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (3)(b)(1) of the proposed special condition. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(4) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(5) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed




V' = Clearance speed as defined by § 25.629(b)(2).

V" = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$ where:

$T_j$ = Average time spent in failure condition j (in hours)

$P_j$ = Probability of occurrence of failure mode j (per hour)

Note: If $P_j$ is greater than $10^{-3}$ per flight hour, then the flutter clearance speed must not be less than V".

(6) Freedom from aeroelastic instability must also be shown up to V' in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(a) Consideration of certain failure conditions may be required by other sections of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than $10^{-9}$, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. Failure indications. For system failure detection and indication, the following apply:

(a) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems to achieve the objective of this requirement. These Certification Maintenance Requirements (CMRs) must be limited to components that are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(b) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

5. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of this proposed special condition must be met, including the provisions of paragraph 2 for the dispatched condition, and paragraph 3 for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than $10^{-3}$ per hour.

Issued in Renton, Washington, on January 22, 2009.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–7882 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2009–0323; Directorate Identifier 2009–CE–012–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica ltda. Model AMT–100 Gliders as Modified to AMT–200 and Models AMT–200, AMT–200S, and AMT–300 Gliders

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

**ACTION:** Notice of proposed rulemaking (NPRM).

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

It has been found that the coolant liquid EVANS NPG + is a flammable fluid. The engine liquid cooling system of the affected Aeromot aircrafts is not designed to operate with flammable liquids. Therefore, there is an unacceptable engine fire risk associated with the use of Evans NPG + fluid.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by May 8, 2009.

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0323; Directorate Identifier 2009–CE–012–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

The Agência Nacional De Aviação Civil—Brasil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive AD No. 2007–01–01, dated January 29, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found that the coolant liquid EVANS NPG + is a flammable fluid. The engine liquid cooling system of the affected Aeromot aircrafts is not designed to operate with flammable liquids. Therefore, there is an unacceptable engine fire risk associated with the use of Evans NPG + fluid.

Since this condition may occur in other aircraft of the same type and affects flight safety, an immediate corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit without prior notice.

The MCAI requires replacement of the EVANS NPG + coolant liquid, application of new red lines on the engine cylinder head temperature gauge, replacement of the engine radiator cap, and insertion of information into the limitations section of the airplane flight manual (AFM). You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Aeromot has issued Aeromot Service Bulletin No. 200–71–106, dated December 20, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of the Proposed AD

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

### Differences Between This Proposed AD and the MCAI or Service Information

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

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

### Costs of Compliance

We estimate that this proposed AD will affect 55 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $30 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,050, or $110 per product.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Aeromot-Industria Mecanico Metalurgica ltda.:** Docket No. FAA–2009–0323; Directorate Identifier 2009–CE–012–AD.

**Comments Due Date**

(a) We must receive comments by May 8, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all serial numbers of the following gliders that are certificated in any category:

(1) Model AMT–100 gliders as modified to Model AMT–200 gliders; and

(2) Models AMT–200, AMT–200S, and AMT–300 gliders.

**Subject**

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

**Reason**

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

It has been found that the coolant liquid EVANS NPG + is a flammable fluid. The engine liquid cooling system of the affected Aeromot aircrafts is not designed to operate with flammable liquids. Therefore, there is an unacceptable engine fire risk associated with the use of Evans NPG + fluid.

Since this condition may occur in other aircraft of the same type and affects flight safety, an immediate corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit without prior notice.

The MCAI requires replacement of the EVANS NPG + coolant liquid, application of new red lines on the engine cylinder head temperature gauge, replacement of the engine radiator cap, and insertion of information into the airplane flight manual (AFM).

**Actions and Compliance**

(f) Unless already done, do the following actions within the next 20 hours time-in-service after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first, following Aeromot Alert Service Bulletin No. 200–71–106, dated December 20, 2006; Service Bulletin Revision 2 (SB) SB–912–043 R2/SB–914–029 R2, dated November 10, 2006; and ROTAX Service Instruction (SI) SI–912–016/SI–914–019, dated August 28, 2006:

(1) Replace the EVANS NPG + cooling liquid with a conventional, FAA-approved coolant for the ROTAX 912 and 914 series engines.

(2) Apply a new red line marking on the engine cylinder head temperature gauge at 120 [deg] C/248 [deg] F.

(3) Replace the radiator cap part number (P/N) 922075 from the affected engines with a new radiator cap P/N 922070.

(4) Insert into the airplane flight manual (AFM) Limitations section an amendment to include the new operation limit of the cylinder head temperature to 120 [deg] C/248 [deg] F by inserting a copy of Aeromot Alert Service Bulletin No. 200–71–106, dated December 20, 2006, into the AFM, Limitations section, Section 2 on item 2.4, power plant, fuel and oil limitations and item 2.5, power plant instrument markings.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI ANAC Brazilian Airworthiness Directive AD No. 2007–01–01, dated January 29, 2007; AEROMOT Alert Service Bulletin No. 200–71–106, dated December 20, 2006; ROTAX Service Bulletin Revision 2 SB–912–043 R2/SB–914–029 R2, dated November 10, 2006; and ROTAX Service Instruction SI–912–016/SI–914–019, dated August 28, 2006, for related information.

Issued in Kansas City, Missouri, on April 2, 2009.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–7932 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2009–0328; Directorate Identifier 2008–NE–44–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company (GE) CF34–1A, CF34–3A, and CF34–3B Series Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for GE CF34–1A, CF34–3A, and CF34–3B series turbofan engines. This proposed AD would require: Removing from service certain part number (P/N) and serial number (SN) fan blades within compliance times specified in this proposed AD, inspecting the fan blade abradable rub strip on certain engines for wear, inspecting the fan blades on certain engines for cracks, and inspecting the aft actuator head hose fitting for correct position, and if necessary repositioning. This proposed AD results from a report of an under-cowl fire, and a failed fan blade. We are proposing this AD to prevent failure of certain P/N and SN fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by June 8, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

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

You can get the service information identified in this proposed AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kenneth.steeves@faa.gov*; telephone (781) 238–7765; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0328; Directorate Identifier 2008–NE–44–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### Examining the AD Docket

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

### Discussion

We have received reports of certain P/N and SN fan blades failing on CF34 series engines. The first failure also included an under-cowl fire that caused extensive damage to the engine. Although we haven't been able to determine the exact cause of the under-cowl fire because of the thermal damage, the investigation revealed two problems; a fan blade failed at the platform tang and the aft actuator head hose failed. The investigation also revealed that the accessory gearbox had separated from the engine, possibly contributing to the actuator hose failure.

We traced the failed fan blades to a specific supplier and their billet material. The investigation found that the billet alloy material met specifications and the supplier's approved processes were different from other suppliers' approved processes. The differences allowed a larger area of aligned alpha colonies to form in the tang region of the fan blade. If the alpha colonies align, they can cause cracks in the blade tang. Although the material was within specification, and the processes and billet size conformed to the engineering drawings for the blades, GE determined that the material, process, and billet size combined to allow the alpha colonies to align. The investigation also found that although the aft actuator hose is designed to include enough slack to prevent its failure if the gearbox separates from the engine, the incorrect orientation of the aft actuator head hose fitting at the main fuel control removed that slack. The incorrect position of the fitting might have caused the hose to fail and contribute to fire.

This condition, if not corrected, could result in failure of certain P/N and SN fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane.

### Relevant Service Information

We have reviewed and approved the technical contents of the following GE Aircraft Engines Service Bulletins (SBs):

- CF34–AL S/B 73–0046, Revision 02, dated August 27, 2008, and CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, that provide instructions for inspecting the orientation of the aft actuator hose assembly and the main fuel control.
- CF34–AL S/B 72–0245, Revision 01, dated July 3, 2008, CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, and CF34–BJ S/B 72–0230, Revision 01, dated July 30, 2008, that provide instructions for replacing certain existing blades, P/Ns 6018T30P14 and 4923T56G08, that have a SN listed in Appendix A of those SBs.
- CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, and CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, that provide instructions for inspecting the fan case abradable rub strip and fan blade tangs.

**Differences Between the Proposed AD and the Manufacturer's Service Information**

• Service Bulletin CF34–AL S/B 73–0046, Revision 02, dated August 27, 2008 recommends performing the inspection at the next ''A'' check, but no later than 750 hours time-in-service (TIS). This proposed AD would require performing the inspection within 750 hours TIS after the effective date of the proposed AD.

• Service Bulletin CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, recommends performing the inspection of the CF34–3A1 engines at the next scheduled 300 hour check, but no later than 600 hours. This proposed AD would require performing the inspection within 300 hours TIS after the effective date of the proposed AD.

• Service Bulletin CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, recommends performing the inspection of the CF34–3B engines at the next scheduled 400 hour check but no later than 800 hours TIS. This proposed AD would require performing the inspection within 400 hours TIS after the effective date of the proposed AD.

• Service Bulletin CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, recommends inspection of the fan blades if there is a continuous 360 degree rub indication. This proposed AD would require the inspection of the fan blades if there is a continuous 360 degree rub indication. The service bulletin also contains an alternate compliance method using GE's remote diagnostics trend monitoring program. This proposed AD does not include that alternate method.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

• Removing from service certain P/N and SN blades within compliance times specified in this proposed AD.

• Inspecting the fan blade abradable rub strip on certain engines for wear.

• Inspecting the fan blades on certain engines for cracks.

• Inspecting the aft actuator head hose fitting for correct position, and if necessary, repositioning.

The proposed AD would require you to use the service information described previously to perform these actions.

**Costs of Compliance**

We estimate that this proposed AD would affect 1,966 engines installed on airplanes of U.S. registry. We estimate that the fan blade inspection and replacement requirement would affect 300 of these engines, and the actuator head hose inspection would affect 1,662 engines. We also estimate that it would take 0.5 work-hour per engine to inspect the fan blade abradable rub strip, 6 work-hours per engine to visually inspect the fan blades, 11 work-hours per engine to perform an eddy current inspection of the fan blades, and 0.25 work-hour per engine to inspect the actuator head hose fitting, and that the average labor rate is $80 per work-hour. Required parts would cost $51,106,600. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $51,184,000.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

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

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

**The Proposed Amendment**

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**General Electric Company:** Docket No. FAA–2009–0328; Directorate Identifier 2008–NE–44–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 8, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to General Electric Company (GE) CF34–1A, CF34–3A, CF34–3A1, CF34–3A2, CF34–3B, and CF34–3B1 turbofan engines. These engines are installed on, but not limited to, Bombardier Canadair Models CL–600–2A12, CL–600–2B16, and CL–600–2B19 airplanes.

**Unsafe Condition**

(d) This AD results from a report of an under-cowl fire, and a failed fan blade. We are issuing this AD to prevent failure of certain part number (P/N) and serial number (SN) fan blades and aft actuator head hoses, which could result in an under-cowl fire and subsequent damage to the airplane.

**Compliance**

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

**CF34–3A1 and CF34–3B1 Engines**

(f) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 22,000 CSN, and CF34–3B1 engines with fan blades, P/Ns 6018T30P14 or 4923T56G08, that have a fan

blade SN listed in Appendix A of GE Aircraft Engines (GEAE) Service Bulletin (SB) CF34–AL S/B 72–0245, Revision 01, dated July 3, 2008, do the following:

(1) Remove fan blades from service within 4,000 cycles-in-service (CIS) after the effective date of this AD or by December 31, 2010, whichever occurs first.

**Initial Visual Inspection of the Fan Blade Abradable Rub Strip for Wear**

(2) For fan blades with 1,200 or more cycles-since-new (CSN) on the effective date of this AD, within 20 CIS after the effective date of this AD, perform an initial visual inspection of the fan blade abradable rub strip for wear. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(3) For fan blades with fewer than 1,200 CSN on the effective date of this AD, within 1,220 CSN, perform an initial visual inspection of the fan blade abradable rub strip for wear. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(4) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(5) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

**Repetitive Visual Inspection of the Fan Blade Abradable Rub Strip for Wear**

(6) Within 75 cycles-since-last inspection (CSLI) or 100 hours-since-last-inspection (HSLI), whichever occurs later, perform a visual inspection of the fan blade abradable rub strip for wear. Use paragraphs 3.A.(1) through 3.A.(2) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(i) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB CF34–AL S/B 72–0250, Revision 01, dated November 26, 2008, to perform the inspection.

(ii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

**Inspection of the Aft Actuator Head Hose Fitting on CF34–3A1 and CF34–3B1 Engines**

(7) Within 750 hours time in service (TIS) after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB CF34–AL S/B 73–0046, Revision 02, dated August 27, 2008, to perform the inspection.

**CF34–1A, CF34–3A, CF34–3A2, CF34–3B, and CF34–3A1 Engines**

(g) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, and CF34–1A, CF34–3A, CF34–3A2, and CF34–3B engines with fan blades, P/N 6018T30P14 or P/N 4923T56G08, that have a fan blade SN listed in Appendix A of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, do the following:

(1) Remove fan blades, P/N 6018T30P14, from service within 2,400 CSN.

(2) Remove fan blades, P/N 4923T56G08, from service within 1,200 CIS since the bushing repair of the fan blade hole.

**Initial Eddy Current Inspection of the Fan Blades**

(3) For fan blades, P/N 6018T30P14, with more than 850 CSN, but fewer than 1,200 CSN on the effective date of this AD, within 350 CIS after the effective date of this AD, perform an initial eddy current inspection (ECI) of the fan blades for cracks. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(4) For fan blades, P/N 6018T30P14, with 850 or fewer CSN on the effective date of this AD, within 1,200 CSN, perform an initial ECI of the fan blades for cracks. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(5) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

**Repetitive ECI of the Fan Blades**

(6) For fan blades, P/N 6018T30P14, installed, within 600 CSLI, perform an ECI of the fan blades for cracks. Use paragraphs 3.A. or 3.B. of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, to perform the inspection.

(7) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

**Initial Visual Inspection of the Fan Blade Abradable Rub Strip for Wear**

(8) For engines with fan blades, P/N 6018T30P14, installed that have a fan blade SN listed in Appendix A of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008, with 1,200 or more CSN on the effective date of this AD, that haven't had an ECI of the fan blades for cracks, do the following:

(i) Perform an initial inspection of the fan blade abradable rub strip for wear within 20 CIS after the effective date of this AD. Use paragraph 3.A.(1) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(ii) If you find a continuous 360 degree rub indication, before further flight, perform a visual inspection of the fan blades for cracks. Use paragraphs 3.A(2)(a) or 3.A(2)(b) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(iii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

**Repetitive Inspection of the Fan Blade Abradable Rub Strip for Wear**

(9) For engines with fan blades, P/N 6018T30P14, installed, if you have performed an ECI of the fan blade, you don't need to inspect the fan blade abradable rub strip for wear.

(10) For engines with fan blades, P/N 6018T30P14, installed, within 75 CSLI or 100 HSLI, whichever occurs later, do the following:

(i) Perform a visual inspection of the fan blade abradable rub strip for wear. Use paragraph 3.A.(1) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008, to perform the inspection.

(ii) If you find a continuous 360 degree rub indication, before further flight, visually inspect the fan blades using paragraphs 3.A.(2)(a) through 3.A.(2)(b) of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 72–0231, Revision 02, dated November 26, 2008.

(iii) If you find a crack in the retaining pin holes of the fan blade, remove the blade from service.

**Inspection of the Aft Actuator Head Hose Fitting on CF34–3A1 and CF34–3B Engines**

(11) For CF34–3A1 engines, within 300 hours TIS after the effective date of this AD, visually inspect and, if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, to perform the inspection.

(12) For CF34–3B engines, within 400 hours TIS after the effective date of this AD, visually inspect and if necessary, reposition the aft actuator head hose fitting. Use paragraph 3.A of the Accomplishment Instructions of GEAE SB CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008, to perform the inspection.

**Credit for Previous Actions**

(h) Inspections previously performed using the following GEAE SBs meet the requirements specified in the indicated paragraphs:

(1) CF34–AL S/B 72–0250, dated August 15, 2008, meet the requirements specified in paragraphs (f)(2) through (f)(4) of this AD.

(2) CF34–AL S/B 73–0046, Revision 01, dated July 1, 2008, or earlier issue, meet the requirements specified in paragraph (f)(7) of this AD.

(3) CF34–BJ S/B 72–0229, dated April 10, 2008, meet the requirements specified in paragraphs (g)(3) and (g)(4) of this AD.

(4) CF34–BJ S/B 72–0231, Revision 01, dated October 1, 2008, or earlier issue, meet the requirements specified in paragraphs (g)(10)(i) and (g)(10)(ii) of this AD.

(5) CF34–BJ S/B 73–0062, Revision 01, dated July 1, 2008, or earlier issue, meet the requirements specified in paragraphs (g)(11) and (g)(12) of this AD.

**Installation Prohibitions**

(i) After the effective date of this AD:

(1) Do not install any fan blade into any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 22,000 CSN if that fan blade:

(i) Was installed in a CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 15,000 CSN; and

(ii) Is listed in Appendix A of GEAE SB CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008; or

(iii) Is listed in Appendix A of GEAE SB CF34–BJ S/B 72–0230, Revision 01, dated July 30, 2008.

(2) Do not install any fan blade into any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 15,000 CSN if that fan blade:

(i) Was installed in any CF34–3A1 engine with fan drive shaft, P/N 6036T78P02, with an airworthiness limitation section life limit of 22,000 CSN and,

(ii) Is listed in Appendix A of GEAE SB CF34–AL S/B 72–0245, Revision 01, dated July 3, 2008.

**Alternative Methods of Compliance**

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(k) Contact Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kenneth.steeves@faa.gov*; telephone (781) 238–7765; fax (781) 238–7199, for more information about this AD.

(l) GE Aircraft Engines SBs CF34–AL S/B 73–0046, Revision 02, dated August 27, 2008; CF34–AL S/B 72–0245, Revision 01, dated July 3, 2008; CF34–AL S/B 72–0250, dated August 15, 2008; CF34–BJ S/B 73–0062, Revision 02, dated August 27, 2008; CF34–BJ S/B 72–0229, Revision 01, dated July 30, 2008; CF34–BJ S/B 72–0230, Revision 01, dated July 30, 2008; and CF34–BJ S/B 72–0231, Revision 01, dated October 1, 2008; pertain to the subject of this AD. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422, for a copy of this service information.

Issued in Burlington, Massachusetts, on April 4, 2009.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E9–8070 Filed 4–6–09; 11:15 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0189]**

**RIN 1625–AA00**

## Safety Zone; Norfolk Tides Post-Game Fireworks Display, Elizabeth River, Norfolk, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a temporary safety zone on the Elizabeth River in the vicinity of Harbor Park, Norfolk, VA in support of the post-game fireworks displays over the Elizabeth River. This action will protect the maritime public on the Elizabeth River from the hazards associated with fireworks displays.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 29, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0189 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0189 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail LT Tiffany Duffy, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0189), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0189'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0189 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

**Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Coast Guard Sector Hampton Roads has been notified that a fireworks display is scheduled to occur after the May 16, 2009 Norfolk Tides home baseball game. Although this display will be fired from land, a portion of the fallout zone is over the Elizabeth River. Due to the need to protect mariners and spectators from the hazards associated with fireworks display the Coast Guard will limit access to the Elizabeth River within a 210 foot radius of the fireworks launching area.

**Discussion of Rule**

The Coast Guard proposes establishing a safety zone on specified waters of the Elizabeth River in the vicinity of Harbor Park, Norfolk, VA. This safety zone will encompass all navigable waters within 210 feet of the fireworks launch site located on land directly behind the stadium at approximate position 36°50′30″ N/ 76°16′42″ W (NAD 1983). We propose establishment of this regulated area in the interest of public safety during the fireworks display. We intend to enforce this zone on May 16, 2009 from 10 p.m. until 10:30 p.m. Access to the safety zone will be restricted during the specified date and time. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The safety zone will only be in place for a limited duration. Maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: Owners and operators of vessels intending to transit or anchor in that portion of the Elizabeth River from 10 p.m. until 10:30 p.m. on May 16, 2009. Although the safety zone will apply to a portion of the Elizabeth River, there will be adequate space for mariners to safely transit around the zone.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone around a fireworks display. The fireworks will be launched from a land area, however some fallout may enter the water within a 210 foot radius of the launching site. This zone is designed to protect mariners from the hazards associated with fireworks displays.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–0189 to read as follows:

**§ 165.T05–0189 Safety Zone; Norfolk Tides Post-Game Fireworks Display, Elizabeth River, Norfolk, VA.**

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Elizabeth River located within a 210 foot radius of the fireworks launching site located at approximate position 36°50′30″ N/76°16′42″ W (NAD 1983), directly behind Harbor Park Stadium in the vicinity of Norfolk, VA.

(b) *Definition:* For the purposes of this part, Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be in enforced on May 16, 2009 from 10 p.m. until 10:30 p.m.

Dated: March 25, 2009.

**Patrick B. Trapp,**

*Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.*

[FR Doc. E9–7884 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–15–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

### 37 CFR Part 370

**[Docket No. RM 2008–7]**

### Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Copyright Royalty Judges are seeking written comments from interested parties to questions relating to the costs of census versus sample reporting to assist the Judges in the revision of the interim regulations for filing notices of use and the delivery of records of use of sound recordings under two statutory licenses of the Copyright Act.

**DATES:** Comments are due no later than May 26, 2009. Reply comments are due no later than June 8, 2009.

**ADDRESSES:** Comments and reply comments may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and reply comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express

Mail. If by mail (including overnight delivery), comments and reply comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and reply comments must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by commercial courier, comments and reply comments must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

**FOR FURTHER INFORMATION CONTACT:** Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 30, 2008, the Copyright Royalty Judges (''Judges'') published a notice of proposed rulemaking (''NPRM'') setting forth proposed revisions to the interim regulations adopted in October 2006 for filing notice of use and the delivery of sound recordings under sections 114 and 112 of the Copyright Act, title 17 of the United States Code. 73 FR 79727. Specifically, the Judges proposed eliminating obsolete provisions of the interim regulations and placing definitions that were duplicated in various sections of the interim regulations into a new single definition section applicable throughout Part 370 unless otherwise defined in a specific section. *Id.* The more significant revision proposed by the Judges was to expand the reporting period to implement year-round census reporting. Consequently, the Judges proposed eliminating for nonsubscription services the aggregate tuning hours (''ATH'') approach previously available and requiring that such services now report actual total performances. Conversely, the Judges proposed allowing preexisting satellite digital audio radio services, new subscription services and business establishment services to achieve census reporting by using the ATH option if technological impediments existed which thwarted the measurement of actual listenership. Finally, the Judges also solicited comments on technological developments which may warrant additional revisions to rules governing the method of reporting specific data elements and/or the delivery mechanism employed for reporting.

**Discussion of Comments Received**

In response to the NPRM, the Judges received 43 comments from various categories of interested parties: (1) Representatives of copyright owners and performers, including SoundExchange, the Collective charged with collecting and distributing royalties; (2) copyright users and/or their representatives, educational radio broadcasters, a noncommercial religious broadcaster, and an operator of radio and Internet stations featuring Christian programming; (3) an Internet service that simulcasts the over-the-air and Internet-only broadcasts of primarily noncommercial terrestrial radio stations; and (4) software providers of recordkeeping solutions to radio stations and webcasters.

SoundExchange and Frederick Wilhelms III, who works for recording artists and songwriters, support the Judges' proposal to require census reporting. They contend that the current sample reporting results in underpayments or non-payments to some copyright owners and performers. Comments of SoundExchange at 4; Comments of Wilhelms at 1. According to SoundExchange, requiring all services to provide census reporting would eliminate this shortcoming and allow SoundExchange to ''distribute funds on a fully accurate basis to all copyright owners and performers.'' Comments of SoundExchange at 3 (footnote omitted). SoundExchange notes that ''many services already provide SoundExchange with year-round census reporting,'' *Id.* at 5, and estimates that ''over 75% of the royalties it receives from licensees are associated with reports of use that are made using year-round census reporting.'' *Id.* at 6.

Commenters representing certain educational and commercial radio broadcasters opposed the proposed census reporting requirement. The educational radio broadcasters who filed comments stated that they currently do not pay more than the $500 minimum fee and do not exceed the minimum ATH threshold. *See, e.g.,* Comments of WONB Radio, Comments of WESS Radio. *See also* Comments of College Broadcasters Inc. These commenters argued that compliance with such requirements would be unduly burdensome, if not impossible, for them because they lack the finances, the staff, and the technology to do so. Consequently, they conclude that application of the proposed revisions would force many of them to cease their operations due to their inability to comply with the revised regulations. *See* Comments of WPTS, KWSC–FM, and Blaze Radio. Moreover, some commenters note that complying with the proposed provision regarding census reporting would be difficult because many educational radio broadcasters do not have automated playlists but rather their playlists are created manually by disc jockeys as they play the music. *See, e.g.,* Comments of WSOU–FM at 1–2. Consequently, they urge the Judges to exempt from more stringent reporting requirements those educational radio broadcasters currently paying only the $500 minimum fee and not exceeding the ATH threshold and allow them to continue to report under the current interim regulations.

The National Association of Broadcasters' (''NAB'') comment echoes the educational radio broadcasters' contention that the proposed move to census reporting and the elimination of the ATH option would place an undue burden on broadcasters that is not required by the statute. Comments of NAB at 4. NAB argues that there has been no showing that ''the sampling methodology currently utilized by SoundExchange is inefficient, or results in significant misallocation of royalty payments.'' *Id.* at 3.

With respect to the elimination of the ATH option, NAB contends that this option is ''critical'' for some broadcasters. *Id.* NAB asserts that payment of royalties on the basis of actual performances is far different from reporting performances of any given recording on an actual performance basis. NAB states that the latter requires the matching of the identity of the song with the number of listeners while the former does not. According to NAB, to accomplish the reporting proposed by the Judges, broadcasters would have to merge internal song identification and automation software. NAB argues that often these systems are incapable of communicating with each other and are not operated by the same entities. *Id.*

Two recordkeeping and reporting vendors also opposed the proposed census reporting requirement, citing concerns about costs and the technological difficulties in calculating actual total performances accurately. Comments of RadioActivity.Fm and Tom Worster/Spinitron.

**Request for Additional Information**

The current proposal is intended to fulfill the Judges' obligations under the

Copyright Act to establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings and under which records of use shall be kept and made available by entities performing sound recordings. *See, e.g.,* 17 U.S.C. 114(f)(4)(A). The Judges have determined preliminarily that such reasonable notice of use requires the type of census reporting that this proposal mandates. However, the Judges are mindful of the concerns expressed by some commenters that any reporting requirements that the Judges adopt should not unduly burden the services required to file reports of use. Therefore, the Judges seek additional information to gain a fuller understanding of the likely costs and benefits that will be derived if the proposed census reporting provision is adopted and to consider any alternatives to the proposal that might accomplish the same goals as the proposal in a less burdensome way, particularly with respect to small entities.

*Consideration of Impact on Small Entities*

Some commenters have stated that the proposed census reporting requirement would adversely impact small entities. The Judges are mindful of any impact that the current proposal may have on small entities. Therefore, the Judges seek comment on the approximate number of small entities that would be impacted by the proposed rulemaking, and in particular, by the proposed census reporting requirement.

To help mitigate possible impact on small entities, the Judges also seek possible alternatives to the proposed census provision. In considering the proposed census reporting requirement, the Judges considered, as possible alternatives, maintaining the current reporting requirement, which requires services to provide the total number of performances of each sound recording during the relevant reporting period, which is currently limited to two periods of seven consecutive days for each calendar quarter of the year. Moreover, with respect to certain services, the proposal includes an ATH alternative to measuring performances to the extent that technological impediments hamper such a service's ability to measure actual listenership. The Judges also considered exempting from the proposed census reporting requirements certain categories of services that might lack the resources or the technological sophistication to comply with the proposed census reporting requirement. Preliminarily, the Judges believe that the alternatives discussed above could result in an unfair allocation of royalty fees by under-compensating certain copyright owners who were not accurately represented through the current sample reporting and by over-compensating copyright owners whose works are over-represented in the sample period. Nevertheless, the Judges seek comment on the alternatives discussed above, as well as others that the Judges should consider and whether those alternatives would be preferable to the current proposal in terms of accurately representing the actual listenership information and any cost savings that might be realized should the Judges adopt an alternative rather than the current proposed census reporting provision.

In this regard, the Judges seek detailed information from SoundExchange about the way in which the proposed census reporting requirement would enhance its ability to more accurately and efficiently distribute royalties to copyright owners. In particular, the Judges seek information from SoundExchange that discusses the current methodology SoundExchange uses to allocate royalties as well as a discussion about how that methodology would change if the proposed census provision is adopted. Currently, SoundExchange is receiving some reports based on ATH rather than on the measurement of the actual total performances of a sound recording during the reporting period. How is SoundExchange currently allocating payments among the specific songs performed in ATH-based reports? What proportion of the total number of songs performed in the first quarter of 2008 was reported on an ''actual total performance basis'' as compared to an ATH basis? What proportion of revenues received for songs performed in the first quarter of 2008 have been distributed to date? For the same period, what proportion of the revenues distributed were revenues attributed to song performance as measured by actual total performance as compared to by ATH? What metrics does SoundExchange currently employ to measure its effectiveness in receiving and distributing performance revenues?

We seek estimates from SoundExchange (and others) detailing the cost savings or additional burdens, if any, that copyright owners might expect if the census reporting provision were adopted. As discussed above, SoundExchange has stated that ''over 75% of the royalties it receives from licensees are associated with reports of use that are made using year-round census reporting.'' Comments of SoundExchange at 6. The Judges seek additional information on how SoundExchange derived this estimate. For example, what percentage of reporting entities currently uses year-round census reporting? What percentage of songs for which SoundExchange is the Collective are reported based on year-round census reporting? What is the nature of those entities that do not currently use year-round census reporting? For example, what percentage of entities that do not use year-round reporting are small entities? [1] What percentage are not-for-profit entities?

If the Judges were to exempt certain classes of entities from the proposed year-round reporting provision, what would be appropriate criteria for such an exemption? In providing your comment, please consider which entities would be least likely to have the resources or technological sophistication to comply with the proposed census provision. For example, would a revenue-based cut-off be the most appropriate method for developing an exemption? If so, what would be an appropriate revenue level to qualify for an exemption? In the alternative, would it be more appropriate to exempt from the proposed census reporting provision those entities that qualify for the minimum $500 per channel or per station performance royalty set forth in 37 CFR 380.3(a)(2)? If so, should the exemption be limited to noncommercial entities or should commercial entities qualify for the exemption also? Are there other criteria that would be preferable in formulating an exemption (*e.g.,* number of employees, profit versus not-for-profit organizational structure)?

Has SoundExchange considered adding any additional open-source licensed spreadsheet programs to the Microsoft Excel and Corel Quattro Pro spreadsheet programs it currently supports to facilitate the submission of Reports of Use? What are the potential benefits and difficulties associated with adding such programs? (Any costs cited should be specific dollar amounts). Which Services have examined the use of such open source software? How many would adopt it if it were available as an option? What is the specific dollar amount of any cost-savings envisioned by Services specifically attributable to the use of such open-source spreadsheet software?

As discussed above, some commenters state that complying with

[1] Please consider an entity as small if it is independently owned and operated and is not dominant in its field of operation.

the proposed provision regarding census reporting would be difficult because many educational radio broadcasters do not have automated playlists but rather their playlists are created manually by disc jockeys as they play the music. *See, e.g.,* Comments of WSOU–FM at 1–2. The Judges seek comment on the percentage of broadcasters that do not use automated playlists. Assuming playlists are completely automated, is the cost of preparing a Report of Use likely to rise for a Service which moves from the current 2-weeks per quarter sampling period to full census? If so, by how much will such costs rise? What specifically accounts for any such increase?

For those entities that do not use automated playlists, what means do they use for complying with current reporting requirements? Is all programming on college and other educational stations done manually? Do such stations currently have automated playlist capabilities in place? In other words, does manual programming occur simply as a matter of creative choice? Where a college radio station does not currently have an automated playlist capability, what is the cost of obtaining such a capability? What technologies, if any, are currently employed in complying with the current requirements? Which companies offer them and at what cost? What changes, if any, would be required to comply with the proposed census reporting requirement? What are the likely costs that would be required to move from the current reporting methodology to one that would be required under the proposal? Is technology currently available that would permit entities that do not use automated playlists to comply with the proposed census provision? If so, what companies provide such capabilities and at what cost? If such technology is not currently available, what would be the costs of developing it?

Dated: April 3, 2009.

**James Scott Sledge,**

*Chief, U.S. Copyright Royalty Judge.*

[FR Doc. E9–7950 Filed 4–7–09; 8:45 am]

**BILLING CODE 1410–72–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 26

**[Docket No. OST–2009]**

**RIN 2105–AD75**

## Disadvantaged Business Enterprise Program; Potential Program Improvements

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** This advance notice of proposed rulemaking (ANPRM) provides interested parties with the opportunity to comment on five matters of interest to participants in the Department of Transportation's disadvantaged business enterprise (DBE) program. The first concerns counting of items obtained by a DBE subcontractor from its prime contractor. The second concerns ways of encouraging ''unbundling'' of contracts to facilitate participation by small businesses, including DBEs. The third is a request for comments on potential improvements to the DBE application form, and the fourth asks for suggestions related to program oversight. The fifth concerns potential regulatory action to facilitate certification for firms seeking to work as DBEs in more than one state. The sixth concerns additional limitations on the discretion of prime contractors to terminate DBEs for convenience, once the prime contractor had committed to using the DBE as part of its showing of good faith efforts.

**DATES:** Comments on this proposed rule must be received by July 7, 2009.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number OST–2009) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and 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.
- *Fax:* 202–493–2251.

*Instructions:* You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2009) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov*.

*Docket:* For internet access to the docket to read background documents and comments received, go to *http://www.regulations.gov*. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Room W94–302, 202–366–9310, *bob.ashby@dot.gov*.

**SUPPLEMENTARY INFORMATION:** The Department is holding a series of stakeholder meetings to bring together prime contractors, DBEs, and state and local government representatives to discuss ways of improving administration of the DBE program. As a result of these discussions, the Department has issued, and will continue to consider, guidance Questions and Answers to help participants better understand and carry out their responsibilities. Addressing other issues raised in the discussions, however, may require changes to the DBE rules themselves (49 CFR Parts 23 and 26). This ANPRM concerns five such issues: (1) Counting of DBE credit for items obtained by DBE subcontractors from other sources, particularly the prime contractor for whom they are working on a given contract; (2) ways of encouraging recipients to break up contracts into smaller pieces that can more easily be performed by small businesses like DBEs, known as ''unbundling;'' (3) potential ways of improving the DBE application and personal net worth (PNW) forms; (4) potential ways of improving program oversight, and (5) potential ways of reducing burdens on firms seeking certification as DBEs in more than one state.

**Counting Credit for Items Obtained by DBEs From Non-DBE Sources**

Section 26.55(a)(1) of the Department's DBE rule provides as follows:

(a) When a DBE participates in a contract, you [i.e., the recipient] count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

The preamble discussion of this provision said the following:

The value of work performed by DBEs themselves is deemed to include the cost of materials and supplies purchased, and equipment leased, by the DBE from non-DBE sources. For example, if a DBE steel erection firm buys steel from a non-DBE manufacturer, or leases a crane from a non-DBE construction firm, these costs count toward DBE goals. There is one exception: if a DBE buys supplies or leases equipment from the prime contractor on its contract, these costs do not count toward DBE goals. Several comments from prime contractors suggested these costs should count, but this situation is too problematic, in our view, from an independence and commercially useful function (CUF) point of view to permit DBE credit. 64 FR5115–16, February 2, 1999.

This provision creates an intentional inconsistency between the treatment of purchases or leases of items by DBEs from non-DBE sources. If a DBE contractor buys or rents items from a non-DBE source other than the prime contractor, the recipient counts those items for DBE credit on the contract. If a DBE subcontractor buys or rents the same items from the prime contractor for the DBE's subcontract, the recipient does not award DBE credit for the items.

The policy rationale for this provision, as the preamble quotation notes, is that permitting the prime contractor to provide an item to its own DBE subcontractor, and then claim DBE credit for the value of that item, raises issues concerning whether the DBE is actually independent and performing a CUF. Suppose Prime Contractor A owns an asphalt plant and sells asphalt for a highway construction project to DBE X. Prime Contractor A then claims the value of the asphalt, which its own plant manufactured, for DBE credit. In the Department's view at the time the final rule was adopted, the asphalt represented a contribution to the project by Prime Contractor A, not DBE X. The rule treats the asphalt as material provided by the prime contractor to the project and, consequently, not part of the ''work actually performed by the DBE.'' Therefore, the rule does not permit it to be counted for DBE credit.

In 2007, the Department received a request from the Ohio Department of Transportation for a program waiver of this provision. The Department's response stated the following reason for denying the request:

In reviewing a waiver request, the key point the Department considers is whether granting the request would, in fact, achieve the objectives of the DBE regulation. In this case, the Department believes that it would be contrary to the rule's objectives for the prime contractor to claim DBE credit for the value of its own asphalt, just because the asphalt has passed through the hands of the DBE subcontractor. The asphalt, in this situation, would not represent a contribution to the project by the DBE, but rather part of the prime contractor's work on the project.

Such a result would be contrary to a primary purpose of 49 CFR 26.55, which is to ensure that DBE credit is given only for the contribution to a project that the DBE itself makes. While granting the waiver might permit DBE subcontractors, prime contractors, and ODOT to report higher DBE participation numbers than would otherwise be the case, the reported participation would represent value added by the prime contractor/asphalt manufacturer, not the DBE subcontractor. Doing so would have the effect of permitting prime contractors to meet DBE goals while minimizing the actual contributions they need to obtain from DBEs.

Some prime contractors and DBE contractors have objected to this provision, both in correspondence with the Department and in the stakeholder meeting discussions. They assert that 26.55(a)(1) prevents DBE firms from successfully competing for projects involving the purchase of commodities like asphalt, concrete, or quarried rock, since the DBE credit they could bring to the project would be limited to the installation and labor costs of the job (likely a relatively small percentage of the overall contract). This is particularly true, they say, when there are only one or two suppliers of the commodity within a reasonable distance of the DBE, and those suppliers are owned by or affiliated with a prime contractor. Given that there is a growing perception that independent suppliers of commodities of this kind are being acquired by larger companies, many of whom are prime contractors, many stakeholders believe that this scenario is becoming more widespread.

Participants in the stakeholder meeting discussions also suggested that the current rule could also lead to competitive inequities between prime contractors. For example, suppose Prime Contractor A has an asphalt plant—the only one in the area—and Prime Contractor B does not. Both are bidding on a highway construction contract on which there is a DBE goal. Prime Contractor A cannot count for DBE credit the asphalt that a DBE paving contractor buys, while Prime Contractor B can. This makes it easier for B to meet the DBE goal on the contract.

In thinking about this issue, we have a question about normal industry practices on which we invite comment. Suppose, on a project in which counting DBE participation is not at issue (*e.g.*, a Federal-aid highway contract that has no DBE contract goal, a state-funded project to which the DBE program does not apply, a purely private-sector contract), a prime contractor has a subcontractor who will be doing installation work (*e.g.*, paving, concrete work). If the prime contractor has a manufacturing or distribution facility for the commodity involved, does the prime contractor commonly sell the commodity to the subcontractor, who then is reimbursed by the prime contractor for the sale price as part of the subcontract price? Alternatively, does the prime contractor typically simply make the commodity available on the job site, hiring the subcontractor just to do the installation work? What considerations may affect a decision on this matter?

In response to the concerns that have been expressed at the stakeholder meetings and elsewhere, the Department is seeking comment on four options. All these options focus on the language of the regulation. We do not believe that it is possible to make a reasonable interpretation of the existing regulation that would change the situation about which some DBEs and prime contractors have expressed concern. For example, we do not believe that drawing a distinction between ''supplies'' and ''materials,'' as some have suggested, is viable. In the absence of ''term of art'' definitions of these words in the regulation, we rely on their common meanings, which do not differ significantly. Moreover, the policy rationale of section 26.55(a)(1) referred to above applies equally well to asphalt and other bulk commodities, construction equipment, and other items used on a project.

*Option 1*: No change. Leave the language of section 26.55(a)(1) as it is.

*Option 2*: Leave the basic structure of section 26.55(a)(1) intact, maintaining the intentional inconsistency between items provided to a DBE by the prime contractor on a given project and items provided by another non-DBE source. However, permit recipients to make exceptions based on criteria stated in an

amendment to the rule. The exceptions would allow counting of items provided by a prime contractor to its DBE subcontractor under limited circumstances. For example, one criterion for granting an exception might be the absence of sources for an item in a given geographic area other than a prime contractor bidding on a project. Another might be a determination by the recipient that allowing items provided by a prime contractor to count for DBE credit is necessary to ensure fair competition among prime contractors. The Department seeks comment on what criteria the Department should propose if we pursue this option, as well as what procedures an amended rule should provide for recipients' exception processes.

*Option 3*: Amend the rule to permit items obtained by DBEs for a contract to be counted for DBE credit regardless of their non-DBE source. This option would eliminate the current intentional inconsistency by permitting items obtained by a DBE from its prime contractor to count for DBE credit in the same manner as items obtained from other non-DBE sources. This approach would satisfy the objections of some DBEs and prime contractors to the existing counting provision. It would result in a level competitive playing field among prime contractors and among DBEs. It would probably lead to higher reported DBE participation but it would, to some extent, undermine the principle that only the portion of a contract actually attributable to a DBE's own work should be counted for DBE credit.

*Option 4*: Amend the rule to prohibit items obtained by a DBE from any non-DBE source to be counted for DBE credit. This option would eliminate the current intentional inconsistency by saying that if a DBE obtains items from any non-DBE source, whether the prime contractor or a third party, those items cannot be counted for DBE credit. This approach would result in counting DBE credit in all situations in a way such that only work actually performed by DBEs would result in credit. It would result in a level competitive playing field among prime contractors and among DBEs, but it would probably result in recipients having to set lower DBE goals on some kinds of contracts and to report lower DBE participation numbers.

One concern mentioned in the stakeholder meeting discussion of this issue is that being able to report higher total contract dollars—even if based, in part, on items provided by prime contractors or other non-DBE sources—could be beneficial to DBEs. This was said to be the case because, in effect, it looked good on the resume of a DBE to say that it had completed a relatively large project. Doing so could make it easier for the DBE to grow and build capacity by being able to bid on larger contracts in the future, get larger bonds, etc. The Department seeks comment on how real and important this factor may be, and whether it is a consideration the Department should treat as significant in determining which option to pursue on this issue.

In responding to this ANPRM, we invite interested persons to comment on these four options, how the Department could best structure whichever option it chooses, as well as any other options that commenters think may have merit.

**Contract Unbundling**

For as long as there have been programs designed to assist small or disadvantaged businesses in obtaining government contracts, ''unbundling'' has been mentioned as a desirable way of enhancing business opportunities for these businesses. The Small Business Reauthorization Act of 1997 defines contract bundling as '' consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern.'' By ''unbundling,'' we mean breaking up large contracts into smaller pieces that small businesses will find it easier to compete for and perform, as well as structuring contracting requirements to ease competition for small firms. Unbundling contracts is cited in the DOT DBE regulation (section 26.51(b)(1)) as one of the race-neutral measures that recipients can take to help meet overall DBE goals.

In the DBE program, as in direct Federal procurement, unbundling historically has been easier to praise than to implement. The reasons why are not hard to understand. Contracting agencies often believe, with some justification, that it is more economically efficient to issue one large contract than to issue a series of smaller contracts. Doing so may also reduce the administrative burdens of the procurement process. In this ANPRM, the Department is seeking comment on what steps—beyond using its bully pulpit to advocate greater use of the technique—the Department might take to foster unbundling.

For example, would it be useful to add to Part 26 a requirement that recipients' DBE programs include specific policies and procedures to unbundle contracts of a certain size that are subject to DBE program requirements? In all design-build contracts, or other types of large contracts involving a master or central prime contractor, should there be requirements that the prime contractor ensure that some subcontracts are structured to facilitate small business participation? When a recipient is letting a race-neutral contract (that is, one without a DBE contract goal), should the terms of the solicitation call on the prime contractor to provide for enough small subcontracts to make it possible for small businesses, including DBEs, to participate more readily? When a recipient has a significant race-neutral component of its overall goal, should the recipient be required to ensure that some portion of the contracts that it issues are sized to facilitate small business participation? Should recipients include, as an element in their DBE programs, procedures to facilitate cooperation among small and disadvantaged businesses to enable them to better compete for larger contracts (e.g., formation of joint ventures among DBEs)?

The Federal Acquisition Regulations (FARs) have procedures and criteria related to unbundling in direct Federal procurement. Do any of the FAR provisions suggest useful ways of approaching unbundling issues in the DBE program?

The Department seeks comment on whether any of these ideas have merit, as well as any other suggestions that interested persons may have to make contracts more accessible to small and disadvantaged businesses. It would be useful for the Department to receive information on ''best practices'' that recipients have successfully implemented to make contracts more accessible to small businesses.

**Revised DBE Certification Application and Personal Net Worth Statement**

Under § 26.83(c)(7) of the Regulation, firms applying for DBE certification must use the uniform certification application form provided in Appendix F without change or revision. The application is intended to provide sufficient details concerning a firm so that recipients can determine whether the applicant firm is eligible for the program. Entries are provided to capture details concerning the firm's origination; control by the disadvantaged owners; involvement by directors, employees, and other companies in the firm's affairs; and financial/equipment arrangements. Recipients are permitted (with approval from the concerned Operating

Administration) to supplement the form by requesting additional information.

The Department takes the uniformity requirement seriously. We have heard numerous complaints from DBEs that application materials may differ widely from state to state. We emphasize that all UCPs must use the same, identical DOT form, without change or addition except as specifically approved by an Operating Administration.

We seek comment on what changes to the current application form (Appendix F) could be made to provide a more comprehensive understanding of the business structure and operation of the applicant firm. In particular, what items could be added, revised or eliminated so that recipients can obtain the information they need to adequately assess an applicant's eligibility? We note that several pieces of new information placed on the application could be potentially useful for determining owners' economic disadvantage and their ability to control their business. For example, an applicant's date of birth would assist in determining a proper value for retirement assets under § 26.67(a)(2)(iii)(D), which accounts for assets that cannot be distributed to an individual without significant adverse tax consequences. Under Internal Revenue Service guidelines, a person's age is relevant when making such a calculation; yet the application and tax material submitted in connection with a DBE certification application does not contain the applicant's date of birth.

Questions 11 and 12 (found in Section 4 ''Control'') request information on the firm's management personnel who may perform a management or supervisory function for another business, or own or work for any other firms that have a relationship with the applicant firm. As written, these questions may not capture other types of employment or activities that persons may be commonly engaged in outside their role with the applicant firm. We believe that the outside activities of a firm's owner(s) and key personnel are highly relevant in determining who at the firm controls each activity for which the firm is seeking certification. If an owner is absent from the firm and performs work (paid or unpaid) elsewhere, this could have an impact on the firm's eligibility. While such information is commonly placed on résumés submitted with the application or obtained during an on-site visit, this is not always the case. Also, not every key person submits his or her résumé and it may be difficult to determine the number of hours devoted to firm activities. Should the application include more details concerning owners' outside employment or other business dealings to include a description of the time spent at these operations and an explanation of how these activities do not conflict with their ability to manage the applicant firm?

A related omission is found in Section 3, Part B, Question 4, which asks for owner's ''familial relationship to other owners.'' This entry does not include an owner's familial relationship to other employees at the firm, any one of whom may have financed the operation or control key aspects of the firm's work. This type of information would not be obtained without probing further during an on-site visit. What items could be added to the certification application that would clarify the roles of the firm's owners and key individuals? What items are missing from the form that are routinely asked during the on-site visit? On such item is the firm's NAICS Code. While an entry exists in Section 2 for a description of the firm's primary activities, it seems necessary for certification purposes for the firm and a recipient to determine which NAICS Codes are applicable. We invite interested persons to comment on these issues and provide suggestions for changes to the certification application form.

The foregoing paragraphs have asked for comment on clarifications or additions to the existing application form. The Department has also heard concerns that the form, as currently structured, is too long and complex, to the point of deterring firms from applying for DBE certification. The Department seeks comment on whether there are ways of significantly shortening or simplifying the form that would continue to give UCPs sufficient information to make informed decisions about firms' eligibility. If commenters have a model of an alternative form in mind, it would be helpful if they would provide a draft copy with their comments.

We also invite comments on an appropriate personal net worth form to be used by each applicant owner claiming to be socially and economically disadvantaged. The current certification application allows applicants to submit their own version of a personal net worth statement, and the Small Business Administration's ''personal financial statement'' (Form 413) is most commonly used. SBA's form is tailored to its program and the form's headnote asks for completion of the statement by each proprietor, or limited partner with 20 percent or more interest and each general partner; or each stockholder holding 20 percent or more of voting stock; or any person or entity providing a guaranty on the loan. This varies significantly from the DBE program and has caused confusion, as Part 26 requires that only disadvantaged owners claiming ownership of 51 percent of the firm (or a combination of disadvantaged owners holding a majority interest) submit a personal net worth statement. Confusion also stems from the nature of the entries to be completed by the applicant, which are missing information that recipients find useful in verifying the calculation of assets and liabilities. This is particularly the case in the listing of ''real estate owned,'' as the form does not allow easy entry of multiple owners, their relative share of any mortgages, any home equity/secondary loan amounts, and other items.

Should Part 26 specify in greater detail what types of information should be included on an applicant's personal net worth statement and what attachments should accompany the statement? What instructions can be placed on the application to alert owners (and recipients) that all assets are relevant to determining a person's overall net worth? Instructions could specify that items often overlooked or mischaracterized as a joint asset (such as individual retirement accounts, which are never jointly held, or Medical Savings Accounts) should be included on the statement. In addition, how can owners adequately explain whether new assets were purchased with dividends or capital gains that are reported in a tax return, but not reflected on the personal net worth statement? What transactional details such as these should we require applicants to report? Are there financial documents not necessarily related to a person's net worth that are missing but could be relevant to other aspects of the rule, such as W–2 ''Wage and Tax'' statements showing remuneration of owners and personnel?

We are aware that an expanded form may have the unintended consequence of adding to the paperwork performed by firms and the length of the overall information gathering process, two issues that we hope commenters will also address. As with the application form, the Department seeks comment on whether there are ways of significantly shortening or simplifying the form that would continue to give UCPs sufficient information to make informed decisions about applicants' PNW. If commenters have a model of an alternative form in mind, it would be helpful if they would provide a draft copy with their comments.

The Department also believes strongly that PNW is not the only factor that recipients should consider in

determining whether an applicant is economically disadvantaged. As the Department has said in guidance, there may be situations in which the overall financial situation of an applicant can reasonably suggest that the applicant is not economically disadvantaged, even when his or her PNW falls under the $750,000 cap. For example, if an individual owns a $15 million house with a $14.5 million mortgage, or has numerous vacation properties, or an expensive yacht or horse breeding farm, or lives with family members whose evident wealth is quite high, a UCP might reasonably conclude that he or she is not economically disadvantaged even though he or she may meet the PNW requirements of the rule. The Department seeks comment on how best to apply and describe the economic disadvantage concept in its rules.

**Program Oversight**

Two stated objectives of the DBE program are to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts and to ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs. Unfortunately, these objectives have at times been thwarted by DBE program fraud, fronts/pass-throughs, and other nefarious schemes, which have been subjects of great concern to the Department. In 2004, the Secretary of Transportation established a senior-level working group to develop and implement strategies for enhanced compliance, enforcement, and oversight of the DBE program. Combating DBE fraud has become a major emphasis area for the Department's Office of the Inspector General.

While effort at the Federal level is very important, fraud prevention begins at the state and local level. We seek comment on amending the regulation to require recipients to take a more hands-on approach to overseeing the program. The precise nature of what this entails is the subject of this portion of our request for information and we seek input on what revisions could increase the integrity of the program and what best practices exist that recipients could emulate. This includes specific language that could be added to address (1) conflicts of interest within a recipient's certification unit or UCP, (2) general standards and guidance for reviewing their DBE program, (3) the independence and competence of certifiers in the process, and (4) objective and impartial judgment on all issues associated with the DBE program. If additional language would be too cumbersome, are there different measures that would achieve this same result?

**Facilitating Interstate Certification**

The DBE program is a national program, and many firms are interested in working in more than one state. However, certification proceeds on a state-by-state basis, with each state's UCP operating independently. In the stakeholder meetings and other forums, DBEs and prime contractors have frequently expressed frustration at what they view as unnecessary obstacles to certification by one state of firms located in other states. They complain of unnecessarily repetitive, duplicative, and burdensome administrative processes and what they see as the inconsistent interpretation of the DOT rules by various UCPs. There have been a number of requests for nationwide reciprocity or some other system in which one certification was sufficient throughout the country.

The Department believes that more should be done to facilitate interstate certification. Interstate reciprocity has always been authorized under Part 26 (see section 26.81(e) and (f)), and in 1999 we issued a Q&A encouraging this approach. To further encourage such efforts, the Department issued a Q&A in 2008, providing the following guidance:

**WHAT STEPS SHOULD RECIPIENTS AND UCPs TAKE TO REDUCE CERTIFICATION BURDENS ON APPLICANTS WHO ARE CERTIFIED IN OTHER STATES OR CERTIFIED BY SBA? (Posted—6/18/08)**

* It is the policy of the Department of Transportation that unified certification programs (UCPs) should, to the maximum extent feasible, reduce burdens on firms which are certified as DBEs in their home state and which seek certification in other states. Unnecessary barriers to certification across the country are contrary to the purpose of a national program like the DBE/ACDBE program.

* In particular, recipients and UCPs should not unnecessarily require the preparation of duplicative certification application packages.

* We remind recipients and UCPs that the Uniform Certification Application Form in Appendix F to part 26 MUST be used for all certifications. The rules do not permit anyone to alter this form or to use a different form for DBE certification purposes.

* The Department strongly encourages the formation of regional certification consortia, in which UCPs in one state provide reciprocal certification to firms certified by other members of the consortium. Consortium members should meet and/or speak with each other frequently to discuss eligibility concerns and approaches to common issues, to conduct training, and for other purposes. Generally, these consortia should be established among states that are located in proximity to one another.

* The Department will closely monitor the efforts of UCPs to reduce burdens on firms applying for certification outside their home states. The Department will determine at a later time whether additional regulatory action is appropriate to prevent unnecessary certification burdens.

*Certifications From Other States*

* For situations in which a firm certified in State A applies for certification in State B, we suggest the following model. Other approaches are also possible, but the Department believes strongly that all states should put into place procedures to avoid having firms certified in one state start the application process from scratch in another state.

+ Request that the applicant provide a copy of the full and complete application package on the basis of which State A certified the firm. State B should require an affidavit from the firm stating, under penalty of perjury, that the documentation is identical to that provided to State A. It is important that all this material be legible, so that State B can review the package as if it were the original.

+ To ensure that information is reasonably contemporary, State B could have a provision limiting this expedited process to application packages filed with State A within three years of the application to State B.

+ State B should instruct the applicant to provide any updates needed to make the application material current (e.g., changes in personal net worth of the owner, more recent tax returns, changes affecting ownership and control).

+ State B should request State A's on-site review report and any accompanying memoranda or evaluations. State A should promptly provide this material.

+ State B should certify the firm unless changes in circumstances or facts not available to State A justify a different result, or unless State B can articulate a strong reason for coming to a different result from State A on the same facts.

The Department is aware that in one case, Virginia, Maryland, and the District of Columbia have created a ''reciprocity'' agreement with respect to DBE certification, though it does not have the ''rebuttable presumption of eligbility'' feature suggested in the Department's Q&A. That is a feature we regard as a key part of an effective interstate certification system. Otherwise, we are not aware of much activity to facilitate interstate certifications and thereby mitigate the problems of which DBEs have spoken. UCP representatives have been very candid in saying that a lack of trust among various state UCPs and a concern about the perceived uneven quality of certifications are obstacles to such action.

Another obstacle to effective interstate certification, and to effective oversight of certified firms generally, is the apparent age of many on-site review reports. A firm may be certified in State

A in Year 1, with no update of the on-site review for many years thereafter. When the firm applies to State B eight years later, State B does not have a reasonably recent on-site review report to use in determining whether the firm is eligible. Even State A does not have recent information to rely upon in determining whether the firm remains eligible. The Department seeks comment on whether it would make sense to require an update of each on-site review report at certain intervals, such as every three or five years. The Department also seeks comment on the impact of such a requirement on UCP resources.

The Department seeks comment on whether we should propose a regulatory requirement along the lines of the idea suggested in the Q&A to begin to surmount the obstacles to facilitating interstate certification. We also welcome ideas about other potential approaches to the issue.

Over the years, interested persons have raised the idea of either nationwide certification reciprocity or Federalizing the certification process. Nationwide reciprocity raises concerns about firms engaging in forum shopping to find the ''easy graders'' among certifying agencies. Federalizing certification, such as having a unitary certification system operated by DOT, may raise significant resource issues. Such an approach could also result in less local ''on the ground'' knowledge of the circumstances of applicant firms, which can be a valuable part of the certification process. The Department seeks comment on how, if at all, these issues could be addressed, and whether there is merit in one or another nationwide approach to certification.

**Terminations for Convenience and Substitution**

Currently, section 26.53(f)(1) tells recipients to

> * * * require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

Under section 26.53(f)(2),

> When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you [the recipient] must require the prime contractor to make good faith efforts to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

In recent years, participants in the DBE program have informally told the Department of what they, and DOT staff, regard as a growing problem. For example, a prime contractor accepts DBE Firm A and lists it as the firm that will meet its DBE contract goal. Firm A expends time, effort, and money to prepare to perform the contract, after signing a letter of intent with the prime contractor. Then, after contract award or execution, the prime terminates Firm A for convenience and substitutes DBE Firm B, whose participation is sufficient to meet the goal.

There could be various reasons for such an action. For example, the prime may have been able to negotiate a lower price with Firm B, or the prime has an established relationship with Firm B, and Firm B has just become available to perform the work. In any case, Firm A is left out in the cold. Because the prime contractor did not terminate Firm A for convenience and then perform the work itself, the recipient did not, under section 26.53(f)(1), have to sign off on the substitution. Because the substitute firm is itself a DBE, the prime contractor met its good faith efforts obligation under section 26.53(f)(2).

We are also aware of another concern. Suppose DBE Firm C is performing a subcontract (*e.g.*, in paving). The recipient issues a change order, resulting in a significant increment in the paving work to be done on the contract. The prime contractor, rather than assigning this additional work to Firm C, either does the work itself or assigns it to another DBE or non-DBE subcontractor. In this situation, Firm C, which is already on the job, and on which the prime contractor relied for its original DBE goal achievement, is denied the opportunity for additional work and profit.

The Department is seeking comment on whether we should modify section 26.53 to provide greater involvement by recipients in these situations. For example, we could propose that, when a prime contractor has relied on a commitment to a DBE firm to meet all or part of a contract goal, the prime contractor could not terminate the DBE firm for convenience without the recipient's written approval, based upon a finding of good cause for the termination. This would be true whether the prime contractor proposed to replace the DBE's participation with another DBE subcontractor, a non-DBE subcontractor, or with the prime contractor's own forces. Likewise, we might propose amending section 26.53 to require the recipient to approve a decision by a prime contractor to give a significant increment in the work (*e.g.*, as the result of a change order) assigned to a DBE subcontractor on which the prime contractor had relied to meet all or part of its contract goal to any party other than that DBE subcontractor. The purpose of these ideas would be to make more meaningful the commitment to a particular DBE firm that the prime contractor made as part of the contract award process. We also seek comment on adding a similar requirement for pre-award substitutions in the case of negotiated procurements.

The concept on which we are seeking comment would concern situations where there is a contract goal in a solicitation for the contract. We do not now contemplate proposing such a provision with respect to race-neutral contracts, in which there was not a contract goal. However, we do seek comments on whether a concept of this kind should apply to race-neutral contracts. We also seek comment on whether we should propose any criteria for recipients to apply in deciding whether to approve a substitution, and on what such criteria might be.

**Regulatory Analyses and Notices**

This ANPRM is a nonsignificant rule under Executive order 12886, because any notice of proposed rulemaking resulting from it will not impose significant costs or burdens on regulated parties. Nor will an NPRM that may follow this ANPRM have significant economic effects on a substantial number of small entities. While the DBE program focuses on small entities, the ANPRM seeks comment on measures that would have the effect of reducing administrative burdens on small entities. At the time of the NPRM, the Department will determine whether it is necessary to conduct a Regulatory Flexibility Analysis.

This ANPRM does not include information collection requirements subject to the Paperwork Reduction Act. The Department does not anticipate effects on state and local governments sufficient to invoke requirements under the Federalism Executive Order. Because it is based on civil rights statutes, this rulemaking is not subject to the Unfunded Mandates Act.

The Department seeks comment on any issues related to the application of these or other cross-cutting regulatory process requirements to rulemaking on the aspects of the DBE program covered by this ANPRM.

Issued this 25th day of March 2009, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

[FR Doc. E9–7903 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 26

**[Docket No. OST–2009–0081]**

**RIN 2105–AD76**

## Disadvantaged Business Enterprise; Overall Goal Schedule and Substitution

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice of proposed rulemaking (NPRM) would propose to improve administration of the Disadvantaged Business Enterprise (DBE) program by calling upon recipients of DOT financial assistance to transmit overall goals to the Department for approval every three years, rather than annually.

**DATES:** Comments on this proposed rule must be received by July 7, 2009.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number OST–2009– ) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and 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.
- *Fax:* 202–493–2251.

*Instructions:* You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2009– ) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov*.

*Docket:* For internet access to the docket to read background documents and comments received, go to *www.regulations.gov*. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Room W94–302, 202–366–9310, *bob.ashby@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

The current DBE rule (49 CFR part 26) requires recipients to submit overall goals for review by the applicable DOT operating administration on August 1 of each year. The process of setting annual overall goals can be time-consuming, particularly given the requirements for public participation by the recipient. The Department's experience has been that many goals are submitted after the August 1 date, and the Department's workload involved in reviewing annual goals from 52 state departments of transportation and hundreds of transit authorities and airports has often resulted in delays in the Department's response to recipients' submissions.

In the Department's 2005 airport concessions disadvantaged business enterprise (ACDBE) regulation (49 CFR part 23), the Department established a staggered three-year schedule for the submission by airports of ACDBE goals. The purpose of this provision was to better manage the workloads of both airports and the Federal Aviation Administration (FAA). This approach appears to have been successful in achieving that objective, and we are now proposing to establish a similar system for Part 26 DBE goals. We seek comment on whether such a system should, like its Part 23 counterpart, permit operating administrations to grant program waivers for different schedules that recipients suggest.

Under the proposal, each Part 26 recipient would submit an overall goal every three years, based on a schedule established by the operating administrations. Some recipients would submit a goal in August 2009, as per the existing requirement. Others would not submit an overall goal until August 2010, and others not until August 2011. With respect to airports, FAA would arrange the schedule so that an airport would not have to submit both a Part 23 and Part 26 goal in the same year. The Department seeks comment on the concept of submitting DBE goals every three years as well as the proposed schedules for submission. We also seek comment on whether the rule should provide for annual reviews of goals or adjustments for new opportunities, similar to what is provided in section 23.45 of the airport concessions DBE rule.

### Regulatory Analyses and Notices

The Department has determined that this action is not considered a significant regulatory action for purposes of Executive Order 12866 or the Department's regulatory policies and procedures. The NPRM would ease administrative burdens on recipients by reducing the frequency of overall goal submissions and would improve protections for DBE subcontractors by requiring recipient approval of certain contracting actions.

The NPRM would affect some small entities, easing administrative burdens related to goal submission on any recipients that are considered small entities and enhancing contracting process protections for DBEs, which are small entities. However, the economic effects of these changes on small entities are negligible. For that reason, the Department certifies that the NPRM, if made final, would not have a significant economic impact on a substantial number of small entities.

The Department has analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132, and has determined that the proposed amendments are consistent with the Executive Order and that no consultation is necessary. This NPRM does not propose information collection requirements covered by the Paperwork Reduction Act.

### List of Subjects in 49 CFR Part 26

Administrative practice and procedures, Airports, Civil rights, Government contracts, Grant programs—transportation, Highways and roads, Mass transportation, Minority business, Reporting and recordkeeping requirements.

Issued at Washington DC this 25th day of March 2009.

**Ray LaHood,**

*Secretary of Transportation.*

For reasons discussed in the preamble, the Department of Transportation proposes to amend Title 49 of the Code of Federal Regulations, Part 26, as follows:

1. The authority citation for 49 CFR part 26 is amended to read as follows:

**Authority:** 23 U.S.C. 324; 42 U.S.C. 2000d et seq.; 49 U.S.C. 1615, 47107, 47113, 47123; Public Law 105–59, sec. 1101(b).

2. Revise § 26.45(f)(1) to read as follows:

**§ 26.45 How do recipients set overall goals?**

* * * * *

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FAA, FTA, or FHWA, as applicable, and posted on that agency's Web site.

* * * * *

[FR Doc. E9–7904 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**RIN 0648–AX39**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 29

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

**ACTION:** Notice of Availability of Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 29 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 29 proposes actions to establish an individual fishing quota (IFQ) program for grouper and tilefish species, establish design elements of the program, allow permit stacking, and establish dual classifications to the shallow water and deepwater management units for speckled hind and warsaw grouper. The measures contained in the subject amendment are intended to reduce effort in the Gulf of Mexico grouper and tilefish fisheries.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on June 8, 2009.

**ADDRESSES:** You may submit comments on the amendment, identified by ''0648–AX39'', by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov*, enter ''NOAA-NMFS–2008–0223'' in the keyword search, then check the box labeled ''Select to find documents accepting comments or submissions'', then select ''Send a Comment or Submission.'' 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.

Copies of Amendment 29 may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org*; or may be downloaded from the Council's website at *http://www.gulfcouncil.org/*. Amendment 29 includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727–824–5305; fax: 727–824–5308; e-mail: *Susan.Gerhart@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### Background

Current regulatory measures used to manage the commercial fisheries for the grouper/tilefish complex in the Gulf exclusive economic zone (EEZ) include a license limitation system, quotas, trip limits, minimum size limits, area/gear restrictions, and seasonal closures. Nonetheless, the commercial grouper and tilefish fisheries have become overcapitalized, which has caused increasingly restrictive commercial regulations. Under the current management structure, the commercial grouper and tilefish fisheries are expected to continue to have higher than necessary levels of capital investment, increased operating costs, increased likelihood of shortened seasons, reduced safety at-sea, wide fluctuations in grouper supply, and depressed ex-vessel prices.

The Council chose a multi-species IFQ program for grouper and tilefish species in the Gulf EEZ as the preferred alternative for effort management. The Magnuson-Stevens Act stipulates the Council may not submit, and the Secretary of Commerce (Secretary) may not approve, an IFQ program that has not first been approved by a majority of eligible voters in a referendum. NMFS conducted a referendum in December 2008, with more than 80 percent of the respondents voting in favor of the IFQ program.

Amendment 29 contains many design elements of the IFQ program, as well as major requirements for limited access privilege programs listed in the Magnuson-Stevens Act. Initial IFQ share distribution, and transfer of shares and allocation during the first 5 years, would be restricted to commercial reef fish permit holders. Initially, shares would be distributed proportionately among eligible participants based on landings during 1999–2004, with an allowance for dropping 1 year. The Regional Administrator would establish a formal appeals process and reserve 3 percent of the total available IFQ shares during the first year of the program for use in resolving disputes. If NMFS implemented commercial quota adjustments or reallocations, IFQ allocation would be redistributed proportionally among shareholders.

Five species-specific share types would be established for red grouper, gag, other shallow water groupers,

deepwater groupers, and tilefishes. In addition, 4 percent of red grouper allocation and 8 percent of gag grouper allocation for each participant would be converted into multi-use allocation valid for harvesting red or gag grouper, with restrictions. Each share type would have a separate share cap equal to the maximum share of that type assigned to an IFQ participant during initial distribution. A cap on total annual allocation equivalent to the share caps would also be established.

All dealer and shareholder operations would be conducted online. Up to 3 percent of the ex-vessel value of a transaction could be charged as cost recovery fees. IFQ share or allocation holders would be responsible for these fees and IFQ dealers would be responsible for fee collection and submission on a quarterly basis. Fishermen would be allowed to select landing sites for IFQ programs, but would require approval by NMFS Office of Law Enforcement.

Amendment 29 also contains actions to allow permit consolidation and to create dual classification for speckled hind and warsaw grouper. Permit consolidation would allow the owner of multiple Gulf of Mexico reef fish commercial vessel permits to consolidate some or all of his/her permits into one, which could contribute to a faster reduction in the number of permits and ease permit renewal requirements. Dual classification of speckled hind and warsaw grouper would reduce bycatch and allow more flexibility in the IFQ program because these species are caught in both shallow and deep water.

The Council has submitted Amendment 29 for Secretarial review, approval, and implementation. A proposed rule that would implement measures outlined in Amendment 29 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by June 8, 2009, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: April 1, 2009.

**Kristen C. Koch,**

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

[FR Doc. E9–7855 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

Federal Register
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Wednesday, April 8, 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

### Commodity Credit Corporation

### Information Collection; Conservation Reserve Program Hunting and Wildlife, Viewing, Other Recreation, Revenue Survey

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), is seeking comments from all interested individuals and organizations on an extension, with revision, of a currently approved information collection. The survey in this information collection is designed to analyze the effect of the CCC's Conservation Reserve Program (CRP) on opportunities for recreational activities, including hunting and fishing in accordance with the Food, Conservation and Energy Act of 2008 (the 2008 Farm Bill).

**DATES:** We will consider comments that we receive by June 8, 2009.

**ADDRESSES:** We invite you to submit comments on this notice. In your comments, include the date, volume, and page number of this issue of **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* Farm Service Agency, USDA, Skip Hyberg, Agricultural Economist, USDA/FSA/EPAS, STOP–0519, 1400 Independence Avenue, SW., Washington, DC 20250.
- *E-mail: Skip.Hyberg@wdc.usda.gov.*
- *Fax:* (202) 690–2186.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be obtained from Skip Hyberg at the above address.

**FOR FURTHER INFORMATION CONTACT:** Skip Hyberg, Agricultural Economist, (202) 720–9222.

**SUPPLEMENTARY INFORMATION:**

#### Description of Information Collection

*Title:* Conservation Reserve Program Reserve Program, Hunting and Wildlife, Viewing Revenue Survey.

*OMB Number:* 0560–0259.

*Type of Request:* Revision.

*Abstract:* The survey is needed in implementing section 2606 of the 2008 Farm Bill (Pub. L. 110–246) to find out how CRP participants are providing recreational activities on their lands, how such activities affect the CRP program, and what revenues are generated by such activities. FSA, on behalf of the Commodity Credit Corporation, provides services to landowners under the CRP to help them conserve and improve soil, water, and wildlife resources on their lands. Some landowners have used their lands, enrolled in the CRP, to provide recreational activities (hunting, fishing, hiking, viewing and other activities) to outdoor recreationists.

*Respondents:* Landowners with land enrolled in the CRP.

*Estimated Annual Number of Respondents:* 3000.

*Estimated Annual Number of Forms Per Person:* 1.

*Estimated Average Time to Respond:* 5 minutes.

*Estimated Total Annual Burden Hours:* 250.

*Comments Are Invited Regarding:*

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of burden, including the validity of the methodology and assumption 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. All comments will be summarized and included in the submission for OMB approval.

**Dennis J. Taitano,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E9–7764 Filed 4–7–09; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### Funding Opportunity Title: Commodity Partnerships for Small Agricultural Risk Management Education Sessions (Commodity Partnerships Small Sessions Program)

*Announcement Type:* Announcement of Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements—Correction.

*Catalog of Federal Domestic Assistance Number (CFDA):* 10.459.

**DATES:** Hard copy applications are due 5 p.m. EDT, May 11, 2009. Electronic applications submitted through Grants.gov are due at 11:59 p.m. EDT, May 11, 2009.

**SUMMARY:** Due to some errors, the following notice supersedes the original Request for Applications, published on March 27, 2009, for the Commodity Partnerships Small Sessions Program at 74 FR 13395–13403.

The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $900,000 (subject to availability of funds) for Commodity Partnerships for Small Agricultural Risk Management Education Sessions (the Commodity Partnerships Small Sessions Program). The purpose of this cooperative partnership agreement program is to deliver training and information in the management of production, marketing, and financial risk to U.S. agricultural producers. The program gives priority to educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage. A maximum of 90 cooperative partnership agreements will be funded, with no more than nine in each of the ten

designated RMA Regions. The maximum award for any cooperative partnership agreement will be $10,000. Awardees must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). Prospective applicants should carefully examine and compare the notices for each program.

The collections of information in this announcement have been approved by OMB under control number 0563–0067, and is currently at OMB for renewal.

This announcement consists of eight sections:

Section I—Funding Opportunity Description
A. Legislative Authority
B. Background
C. Definition of Priority Commodities
D. Project Goal
E. Purpose
Section II—Award Information
A. Type of Award
B. Funding Availability
C. Location and Target Audience
D. Maximum Award
E. Project Period
F. Description of Agreement—Awardee Tasks
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## Full Text of Announcement

## I. Funding Opportunity Description

### *A. Legislative Authority*

The Commodity Partnerships Small Sessions Program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F)).

### *B. Background*

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Act, which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, priority is to be given to reaching producers of Priority Commodities, as defined below.

### *C. Definition of Priority Commodities*

For purposes of this program, Priority Commodities are defined as:

- *Agricultural Commodities Covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty Crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved Commodities.* This group includes: (a) Commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

A project is considered as giving priority to Priority Commodities if 75 percent of the educational activities of the project are directed to producers of any of the three classes of commodities listed above or any combination of the three classes.

### *D. Project Goal*

The goal of this program is to ensure that ''* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools.''

### *E. Purpose*

The purpose of the Commodity Partnership Small Session Program is to provide U.S. farmers and ranchers with training and informational opportunities to be able to understand:

- The kinds of risks addressed by existing and emerging risk management tools;
- The features and appropriate use of existing and emerging risk management tools; and
- How to make sound risk management decisions.

Applications addressing only the purpose stated above will be known as General Risk Management topic applications.

In addition, for 2009, the FCIC Board of Directors and the FCIC Manager are seeking projects that also include the Special Emphasis Topics listed below which highlight the educational priorities with each of the ten RMA Regional Offices:

• Billings, Montana Regional Office (MT, ND, SD, and WY)—Pasture Rangeland Forage, Livestock Gross Margin, Specialty Crops, and Underserved Commodities.
• Davis, CA Regional Office (AZ, CA, HI, NV, and UT) –AGR-Lite in Hawaii, Drought mitigation and lack of irrigation water, other applicable pilot State/County crop insurance pilot programs, and commodities uninsured by the crop insurance program.
• Jackson, MS Regional Office (AR, KY, LA, MS, and TN)—Nursery insurance tools (all States), AGR-Lite Insurance tools (TN) and Nursery Price Endorsement Crop Insurance (all States).
• Oklahoma City, OK Regional Office (NM, OK, and TX)—LRP for Fed & Feeder cattle, AGR-Lite, Native American issues and, Limited English Proficiency.
• Raleigh, NC Regional Office (CT, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, and WV).
• Connecticut—LGM Dairy Cattle, Northern Potatoes, and Nursery Insurance Tools.
• Delaware—LGM Dairy Cattle, Southern Potatoes, and Nursery Insurance Tools.
• Maine—LGM Dairy Cattle, Northern Potatoes, and Nursery Insurance Tools.
• Maryland—LGM Dairy Cattle, Southern Potatoes, and Nursery Insurance Tools.
• Massachusetts—LGM Dairy Cattle, Northern Potatoes, and Nursery Insurance Tools.
• New Hampshire—LGM Dairy Cattle and Nursery Insurance Tools.
• New Jersey—LGM Dairy Cattle, Southern Potatoes, and Nursery Insurance Tools.
• New York—Apiculture, LGM Dairy Cattle, Pasture Rangeland Forage, Northern Potatoes, and Nursery Insurance Tools.
• North Carolina—Apiculture, Pasture Rangeland Forage, LRP for Feeder Cattle, Fed Cattle, Lamb, and Swine, Southern Potatoes, and Nursery Insurance Tools.
• Pennsylvania—Apiculture, LGM Dairy Cattle, Pasture Rangeland Forage, Northern Potatoes, and Nursery Insurance Tools.
• Rhode Island—LGM Dairy Cattle, Northern Potatoes, and Nursery Insurance Tools.
• Virginia—Apiculture, Pasture Rangeland Forage, LRP for Feeder Cattle, Fed Cattle, Lamb, and Swine, Southern Potatoes, and Nursery Insurance Tools.
• Vermont—LGM Dairy Cattle, Northern Potatoes, and Nursery Insurance Tools
West Virginia—LGM Dairy Cattle, and Nursery Insurance Tools.
• Spokane, WA Regional Office (AK, ID, OR, and WA)—Yield and revenue crop insurance products (Actual Production History, Crop Revenue Coverage, Income Protection, and Revenue Assurance) for small grains producers in Idaho, Oregon, and Washington; Cherry, Potato and Sugar Beet insurance tools in Pacific Northwest growers.
• Springfield, IL Regional Office (IL, IN, MI, and OH)—Processing Pumpkin Pilot Program, AGR-Lite, and ARH Cherries Pilot Program.
• St. Paul, MN Regional Office (IA, MN, and WI)—AGR-Lite, understanding how Revenue Policies function and their relationship to marketing decisions.
• Topeka, KS Regional Office (CO, KS, MO, and NE) –Pasture, Rangeland and Forage in States and Counties with the program.
• Valdosta, GA Regional Office (AL, FL, GA. SC, and Puerto Rico)—Pasture, Rangeland, and Forage/Apiculture.

All applicants must clearly specify if their application is addressing a Special Emphasis topic or a General Risk Management topic.

## II. Award Information

### *A. Type of Award*

Cooperative Partnership Agreements, which require the substantial involvement of RMA.

### *B. Funding Availability*

Approximately $900,000 (subject to availability of funds) is available in fiscal year 2009 to fund up to 90 cooperative partnership agreements. The maximum award for any agreement will be $10,000. It is anticipated that a maximum of nine agreements will be funded in each of the ten designated RMA Regions.

In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to awardees for use in broadening the size or scope of awarded projects, if agreed to by the awardee. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 120 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2009.

### *C. Location and Target Audience*

RMA Regional Offices and the States serviced within each Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within the Region.

*Billings, MT Regional Office:* (MT, ND, SD, and WY).
*Davis, CA Regional Office:* (AZ, CA, HI, NV, and UT).
*Jackson, MS Regional Office:* (AR, KY, LA, MS, and TN).
*Oklahoma City, OK Regional Office:* (NM, OK, and TX).
*Raleigh, NC Regional Office:* (CT, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, and WV).
*Spokane, WA Regional Office:* (AK, ID, OR, and WA).
*Springfield, IL Regional Office:* (IL, IN, MI, and OH).
*St. Paul, MN Regional Office:* (IA, MN, and WI).
*Topeka, KS Regional Office:* (CO, KS, MO, and NE).
*Valdosta, GA Regional Office:* (AL, FL, GA, SC, and Puerto Rico).

Applicants must clearly designate the RMA Region where educational activities will be conducted in their application narrative in block 12 of the SF–424 form. Applications without this designation will be rejected. Priority will be given to producers of Priority Commodities. Applicants proposing to conduct educational activities in more than one RMA Region must submit a separate application for each RMA Region. Single applications proposing to conduct educational activities in more than one RMA Region will be rejected.

### *D. Maximum Award*

Any application that requests Federal funding of more than $10,000 for a project will be rejected. RMA also reserves the right to fund successful applications at an amount less than requested if it is judged that the application can be implemented at a lower funding level.

### *E. Project Period*

Projects will be funded for a period of up to one year from the project starting date.

### *F. Description of Agreement Award: Awardee Tasks*

In conducting activities to achieve the purpose and goal of this program in a

designated RMA Region, the awardee will be responsible for performing the following tasks:

• Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; and (c) inform producers and agribusiness leaders in the designated RMA Region of training and informational opportunities.

• Deliver risk management training and informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using the instructional materials that have been assembled to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.

• Document all educational activities conducted under the cooperative partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee will also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

*G. RMA Activities*

FCIC, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to, the following activities.

• Collaborate with the awardee in assembling, reviewing, and approving risk management materials for producers in the designated RMA Region.

• Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for risk management and for informing producers of training and informational opportunities in the RMA Region.

• Collaborate with the awardee on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.

• Conduct an evaluation of the performance of the awardee in meeting the deliverables of the project.

• Assist in the selection of subcontractors and project staff.

Applications that do not contain substantial involvement by RMA will be rejected.

*H. Other Tasks*

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

**III. Eligibility Information**

*A. Eligible Applicants*

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of risk management education for farmers and ranchers in an RMA Region. Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (*e.g.* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or cooperative partnership; a determination of a violation of applicable ethical standards; a determination of being considered ''high risk''). Applications from ineligible or excluded persons will be rejected in their entirety.

*B. Cost Sharing or Matching*

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

*C. Other—Non-Financial Benefits*

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a cooperative partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the cooperative partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

**IV. Application and Submission Information**

*A. Contact to Request Application Package*

Program application materials for the Commodity Partnerships Program under this announcement may be downloaded from *http://www.rma.usda.gov/aboutrma/agreements*. Applicants may also request application materials from: Lydia M. Astorga, USDA–RMA–RME, phone: (202) 260–4728, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

*B. Content and Form of Application Submission*

A complete and valid application must be submitted in one package at the time of initial submission, which must include the following:

1. An original and two copies of the completed and signed application.

2. A completed and signed OMB Standard Form 424, ''Application for Federal Assistance.''

3. A completed and signed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.'' Federal funding requested (the total of direct and indirect costs) must not exceed $10,000.00.

4. A completed and signed OMB Standard Form 424–B, ''Assurances, Non-constructive Programs.''

5. An electronic copy (Microsoft Word format preferred) on a compact disk (CD) of the completed:

a. ''Written Narrative''—no more than 5 single-sided pages which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria listed in this notice. Although a Statement of Work, which is the third evaluation criterion, is to be completed in detail in RMA 2 Form, applicants may wish to highlight certain unique features of the Statement of Work for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 5 pages will be reviewed.

- No smaller than 12 point font size.
- Use an easily readable font face (*e.g.*, Arial, Geneva, Helvetica, Times Roman).
- 8.5 by 11 inch paper.
- One-inch margins on each page.
- Printed on only one side of paper.
- Held together only by rubber bands or metal clips; not bound or stapled in any other way

b. ''Budget Narrative,'' describing how the categorical costs listed on SF 424–A are derived. The budget narrative should provide enough detail for reviewers to easily understand how costs were determined and how they relate to the goals and objectives of the project.

c. ''Statement of Non-financial Benefits.'' (Refer to Section III, Eligibility Information, C. Other—Non-financial Benefits, above).

d. ''Statement of Work,'' RME 2 Form, which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.

6. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''

7. A completed and signed AD–1047, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions.''

8. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace.''

Applications that do not include items 1–8 above will be considered incomplete, will not receive further consideration, and will be rejected.

*C. Funding Restrictions*

Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative partnership agreement application;

e. Fund political activities;

f. Purchase alcohol, food, beverage or entertainment;

g. Lend money to support farming or agricultural business operation or expansion;

h. Pay costs incurred prior to receiving a partnership agreement; or

i. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

*D. Limitation on Use of Project Funds for Salaries and Benefits*

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative partnership agreement as indicated in Section III. Eligibility Information, C. Other—Non-financial Benefits. One goal of the Commodity Partnerships Small Sessions Program is to maximize the use of the limited funding available for risk management education for producers of Priority Commodities. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

*E. Indirect Cost Rates*

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

b. RMA reserves the right to negotiate final budgets with successful applicants.

c. Applicants may be required to provide a copy of their indirect cost rate negotiated with their cognizant agency.

*F. Other Submission Requirements*

*Mailed Submissions:* Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants using the U.S. Postal Service (USPS) should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington, DC area requires. USPS mail sent to Washington, DC headquarters is sanitized offsite, which may result in delays, loss, and physical damage to enclosures.

Address when using private delivery services or when hand delivering: *Attention:* Risk Management Education Program, USDA/RMA/RME, Room 6709, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Address when using U.S. Postal Service: *Attention:* Risk Management Education Program, USDA/RMA/RME/Stop 0808, Room 6709, South Building, 1400 Independence Ave., SW., Washington, DC 20250–0808.

Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Regardless of the delivery method you choose, please do so sufficiently in advance of the due date to ensure your application package is received on or before the deadline. E-mailed and faxed applications will not be accepted. Application packages received after the deadline will not receive further consideration and will be rejected.

*G. Electronic Submissions*

Applications transmitted electronically via Grants.gov will be accepted prior to the application date or time deadline. The application package can be accessed via Grants.gov, go to *http://www.grants.gov*, click on ''Find Grant Opportunities,'' click on ''Search Grant Opportunities,'' and enter the CFDA number (beginning of the RFA) to search by CFDA number. From the search results, select the item that correlates to the title of this RFA. If you do not have electronic access to the RFA or have trouble downloading material and you would like a hardcopy, you may contact Lydia M. Astorga, USDA–RMA–RME, phone: (202) 260–4728, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

If assistance is needed to access the application package via Grants.gov (*e.g.*, downloading or navigating PureEdge forms, using PureEdge with a Macintosh computer using Adobe), refer to resources available on the Grants.gov Web site first (*http://www.grants.gov/*). Grants.gov assistance is also available as follows:

- Grants.gov customer support.

*Toll Free:* 1–800–518–4726.

*Business Hours:* M–F 7 a.m.–9 p.m. Eastern Time.

*E-mail: support@grants.gov.*

Applicants who submit their applications via the Grants.gov Web site are not required to submit any hard copy documents to RMA.

When using Grants.gov to apply, RMA strongly recommends that you submit the online application at least two weeks prior to the application due date in case there are problems with the Grants.gov Web site and you want to submit your application via a mail delivery service. Electronic applications submitted through Grants.gov are due at 11:59 p.m. EDT on the application deadline date.

*H. Acknowledgement of Applications*

Receipt of timely applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, timely receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until after the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

**V. Application Review Information**

*A. Criteria*

Applications submitted under the Commodity Partnerships Small Sessions Program will be evaluated within each RMA Region according to the following criteria:

Project Impacts—Maximum 20 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Identify the specific actions producers will likely be able to take as a result of the educational activities described in the Statement of Work; (b) identify the specific measures for evaluating results that will be employed in the project; (c) reasonably estimate the total number of producers reached through the various methods and educational activities described in the Statement of Work; and (d) justify such estimates with clear specifics. Reviewers' scoring will be based on the scope and reasonableness of the applicant's clear descriptions of specific expected actions producers will accomplish, and well-designed methods for measuring the project's results and effectiveness. Applicants using direct contact methods with producers will be scored higher.

Statement of Work—Maximum 20 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will be scored higher to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement, which is to provide producers with training and informational opportunities so that the producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools. Applicants are required to submit this Statement of Work on Form RME–2 Form. All narratives should give estimates of how many producers will be reached through this project. Estimates for non-producers can also be made but they should be separate from the estimate of producers.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective RMA Region. The project manager must demonstrate that he/she has the capability to accomplish the project goal and purpose stated in this announcement by (a) having a previous working relationship with the farm community in the designated RMA Region of the application, including being able to recruit approximately the number of producers to be reached in the application and/or (b) having established the capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applicants are encouraged to designate an alternate Project Leader in the event the Project Leader is unable to finish the project. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective RMA Region will receive higher rankings.

Budget Appropriateness and Efficiency—Maximum 15 Points

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer. The applicant must provide information factors such as:

- The allowability and necessity for individual cost categories;
- The reasonableness of amounts estimated for necessary costs;
- The basis used for allocating indirect or overhead costs;
- The appropriateness of allocating particular overhead costs to the proposed project as direct costs; and
- The percent of time devoted to the project for all key project personnel identified in the application. Salaries of project personnel should be requested in proportion to the percent of time that they would devote to the project and cannot exceed 70 percent of the total project budget. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section. Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act.

Priority Commodity—Maximum 10 Points

The applicant can submit projects that are not related to Priority Commodities. However, priority will be given to projects relating to Priority Commodities and the degree in which

such projects relate to the Priority Commodities. Projects that relate solely to Priority Commodities will be eligible for the most points.

Past Performance—Maximum 10 Points

If the applicant has been an awardee of other Federal or other government grants, cooperative agreements, or contracts in the past three years, the applicant must provide information relating to their past performance in reporting on outputs and outcomes under past or current Federal assistance agreements or contracts. The applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. RMA will review past performance reports during the review panel process. RMA reserves the right to add up to 10 points or subtract up to 10 points from applications due to past performance. RMA has established 10 evaluation standards from which your past performance scores is based upon. The 10 evaluation standards are demonstrated by: (1) Submitting all required documents (educational and promotional) to the RO for review prior to dissemination, (2) developing a training plan or accurate set of instructional materials, (3) delivering the materials to his/her intended audience as specified in the statement of work, (4) being able to draw at least 50 percent of the audience estimated in the application, (5) developing a promotional plan or accurate set of promotional materials and properly promoting the program to his/her intended audience, (6) using the RMA logo when deemed appropriate, (7) participating in quarterly conference calls when asked, (8) notifying RO employees of when crop insurance and risk management education workshops and seminars are being held in their region in a timely manner, (9) submitting complete quarterly reports by established deadlines, and (10) achieving the goals and objectives stated upfront in the statement of work. Applicants with very good past performance will receive a score from 6–10 points. Very good past performance is designated by an agreement holder that meets the 10 standards stated above from 70 percent to 100 percent of the time. Applicants with acceptable past performance will receive a score from 1–5 points when the 10 standards are met 40 percent to 69 percent of the time. Applicants with unacceptable past performance will receive a score of zero to minus 10 points when an applicant meets the 10 standards less than 39 percent of the time. Applicants without relevant past performance information will receive a neutral score of the mean number of points of all applicants with past performance. These past performance points will be applied only to applications that the review panel scored above the minimum score. Applications receiving less than the minimum score required to be eligible for potential funding will not receive past performance points.

Projected Audience Description—Maximum 5 Points

The applicant must clearly identify and describe the targeted audience for the project. Applicants will receive higher scores to the extent that they can reasonably and clearly describe their target audience and why the audience would choose to participate in the project. The applicant must describe why the proposed audience wants the information the project will deliver and how they will benefit from it.

*B. Review and Selection Process*

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or that are incomplete will not receive further consideration during the next process. Applications that meet announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the RMA Region according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative partnership agreements for each RMA Region. Funding will not be provided for an application receiving a score less than 45. Funding will not be provided for an application that is highly similar to a higher-scoring application in the same RMA Region. Highly similar is one that proposes to reach the same producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect not to fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

**VI. Award Administration Information**

*A. Award Notices*

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into cooperative partnership agreements with those selected applicants. The agreements provide the amount of Federal funds for use in the project period, the terms, and conditions of the award, and the time period for the project. The effective date of the agreement shall be on the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2010, whichever is later.

After a partnership agreement has been signed, RMA will extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made and the awardees announced publicly. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores that are lower that other applications in an RMA Region, or applications that are highly similar to a higher-scoring application in the same RMA Region. Highly similar is an application that proposes to reach the same producers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

*B. Administrative and National Policy Requirements*

1. Requirement To Use Program Logo

Applicants awarded cooperative partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials, when deemed appropriate.

2. Requirement To Provide Project Information to an RMA-Selected Representative

Applicants awarded cooperative partnership agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any representative selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Applicants awarded cooperative partnership agreements are subject to audit.

7. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and Tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires awardees and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom awardees or their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application, are available at the address, and telephone number listed in Section VII, Agency Contact.

8. Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement To Assure Compliance With Federal Civil Rights Laws

Awardees of all cooperative partnership agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the awardee is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), 7 CFR part 15, and USDA regulations promulgated thereunder, 7 CFR 1901.202. RMA requires awardees to submit an Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference, if conducted to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that project leaders upload digital copies of all risk management educational materials developed because of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting, if electronically reporting. RMA will be clearly identified as having provided funding for the materials. Projects leaders not reporting electronically will not be required to post educational materials onto the National AgRisk Education Library, but are highly encouraged to do so.

12. Requirement To Submit Proposed Results to the National AgRisk Education Library

RMA requires that project leaders submit results of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting if electronically reporting. Projects leaders not reporting electronically will not be required to post results onto the National AgRisk Education Library, but are highly encouraged to do so.

13. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan should address the concept of continuing operations as they relate to the project. This should include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

*C. Reporting Requirements*

Awardees will be required to submit quarterly progress reports, quarterly financial reports (OMB Standard Form 269), and quarterly Activity Logs (Form RMA–300) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

Awardees will be required to submit prior to the award:

- A completed and signed Assurance Agreement (Civil Rights).
- A completed and signed Faith-Based Survey on EEO.

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** Applicants and other interested parties are encouraged to contact: Lydia M. Astorga, USDA–RMA–RME, phone: 202–260–4728, fax: 202–690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*. You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements*.

**VIII. Other Information**

*A. Dun and Bradstreet Data Universal Numbering System (DUNS)*

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the **Federal Register** June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (*i.e.*, hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov*. Please note that the registration may take up to 14 business days to complete.

*B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals*

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit ''Get Started'' at the Web site, *http://www.grants.gov*. Allow a minimum of 5 business days to complete the CCR registration.

*C. Related Programs*

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC, on April 2, 2009.

**William J. Murphy,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. E9–7896 Filed 4–7–09; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### Funding Opportunity Title: Crop Insurance Education in Targeted States (Targeted States Program)

*Announcement Type:* Announcement of Availability of Funds and Request for Application for Competitive Cooperative Agreements—Correction.

*Catalog of Federal Domestic Assistance Number (CFDA):* 10.458.

**DATES:** Hard copy applications are due *[5 p.m. EDT, May 11, 2009]*. Electronic applications submitted through Grants.gov are due at *[11:59 p.m. EDT, May 11, 2009]*.

**SUMMARY:** Due to some errors, the following notice supersedes the original Request for Applications, published on March 27, 2009, for the Targeted States Program at 74 FR 13403–13410.

The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately $4.5 million (subject to availability of funds) to fund cooperative agreements under the Crop Insurance Education in Targeted States program (the Targeted States Program). The purpose of this cooperative agreement program is to deliver crop insurance education and information to U.S. agricultural producers in certain States that have been designated as historically underserved with respect to crop insurance. The states, collectively referred to as Targeted States, are Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. A maximum of 16 cooperative agreements will be funded, one in each of the 16 Targeted States. Awardees must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), CFDA No. 10.457 (Commodity Partnerships for Risk Management Education), and CFDA No. 10.459 (Commodity

Partnerships for Small Agricultural Risk Management Education Sessions). Prospective applicants should carefully examine and compare the notices for each program.

The collections of information in this announcement have been approved by OMB under control number 0563–0067, and is currently at OMB for renewal.

*This Announcement Consists of Eight Sections:*

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B. Background
C. Project Goal
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B. Funding Availability
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C. Related Programs

**Full Text of Announcement**

**I. Funding Opportunity Description**

*A. Legislative Authority*

The Targeted States Program is authorized under section 524(a)(2) of the Federal Crop Insurance Act (Act).

*B. Background*

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering outreach programs aimed at equal access and participation of underserved communities, and providing risk management education and information. One of RMA's strategic goals is to ensure that its customers are well informed of risk management solutions available. This educational goal is supported by section 524(a)(2) of the Act. This section authorizes funding for the establishment of crop insurance education and information programs in States that have historically been underserved by the Federal crop insurance program. In accordance with the Act, the sixteen States designated as ''underserved'' are Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming (collectively referred to as ''Targeted States''). Hawaii was added this fiscal year when Congress authorized the 2008 Farm Bill.

*C. Project Goal*

The goal of the Targeted States Program is to ensure that farmers and ranchers in the Targeted States are sufficiently informed so as to take full advantage of existing and emerging crop insurance products. In carrying out the programs established under the Food, Conservation, And Energy Act of 2008, the Secretary of Agriculture has placed special emphasis on risk management strategies, education, and outreach specifically targeted at—

(A) Beginning farmers or ranchers;

(B) Legal immigrant farmers or ranchers who are attempting to become established producers in the United States;

(C) Socially disadvantaged farmers or ranchers;

(D) Farmers or ranchers who—

(i) Are preparing to retire; and

(ii) Are using transition strategies to help new farmers or ranchers get started; and

(E) New or established farmers or ranchers who are converting production and marketing systems to pursue new markets.

*D. Purpose*

The purpose of the Targeted States Program is to provide farmers and ranchers in Targeted States with education and information to be able to understand:

- The kinds of risk addressed by crop insurance;
- The features of existing and emerging crop insurance products;
- The use of crop insurance in the management of risk;
- How the use of crop insurance can affect other risk management decisions, such as the use of marketing and financial tools;
- How to make informed decisions on crop insurance prior to the sales closing date deadline; and
- Recordkeeping requirements for crop insurance.

In addition, for 2009, the FCIC Board of Directors and the FCIC Manager are seeking projects that also include the Special Emphasis Topics listed below which highlight the educational priorities within each of the Targeted States:

Massachusetts—LGM Dairy Cattle, Northern Potatoes, and Nursery Crop Insurance Tools.

West Virginia—LGM Dairy Cattle, and Nursery Crop Insurance Tools.

Pennsylvania—Apiculture, LGM Dairy Cattle, Pasture Rangeland Forage, Northern Potatoes, and Nursery Crop Insurance Tools.

New York—Apiculture, LGM Dairy Cattle, Pasture Rangeland Forage, Northern Potatoes, and Nursery Crop Insurance Tools.

Connecticut—LGM Dairy Cattle, Northern Potatoes, and Nursery Crop Insurance Tools.

Delaware—LGM Dairy Cattle, Southern Potatoes, and Nursery Crop Insurance Tools.

Maine—LGM Dairy Cattle, Northern Potatoes, and Nursery Crop Insurance Tools.

Maryland—LGM Dairy Cattle, Southern Potatoes, and Nursery Crop Insurance Tools.

New Hampshire—LGM Dairy Cattle, and Nursery Crop Insurance Tools.

New Jersey—LGM Dairy Cattle, Southern Potatoes, and Nursery Crop Insurance Tools.

Rhode Island—LGM Dairy Cattle, Northern Potatoes, and Nursery Crop Insurance Tools.

Vermont—LGM Dairy Cattle, Northern Potatoes, and Nursery Crop Insurance Tools.

Wyoming—Pasture, Rangeland Forage, Livestock Gross Margin, Specialty Crops, and Underserved Commodities.

Nevada—Crop Insurance in general.

Utah—Crop Insurance in general.

Hawaii—Macadamia Nut and Trees, Hawaii Tropical Fruit and Trees, Nursery Crop Insurance Tools.

**II. Award Information**

*A. Type of Award*

Cooperative Agreements, which require the substantial involvement of RMA.

*B. Funding Availability*

Approximately $4,500,000 (subject to availability of funds) is available in fiscal year 2009 to fund up to 16 cooperative agreements, a maximum of one agreement for each of the Targeted States. The maximum funding amount anticipated for each Targeted State's agreement is as follows. Applicants should apply for funding for that Targeted State where the applicant intends to deliver the educational activities.

| | |
|---|---|
| Connecticut | $235,000 |
| Delaware | 263,000 |
| Hawaii | 233,000 |
| Maine | 243,000 |
| Maryland | 324,000 |
| Massachusetts | 228,000 |
| Nevada | 235,000 |
| New Hampshire | 212,000 |
| New Jersey | 259,000 |
| New York | 479,000 |
| Pennsylvania | 562,000 |
| Rhode Island | 204,000 |
| Utah | 284,000 |
| Vermont | 242,000 |
| West Virginia | 230,000 |
| Wyoming | 267,000 |
| Total | 4,500,000 |

Funding amounts were determined by first allocating an equal amount of $200,000 to each Targeted State. Remaining funds were allocated on a pro rata basis according to each Targeted State's share of 2007 agricultural cash receipts relative to the total for all Targeted States. Both allocations were totaled for each Targeted State and rounded to the nearest $1,000.

In the event that additional funds become available under this program or in the event that no application for a given Targeted State is recommended for funding by the evaluation panel, these additional funds may, at the discretion of the Manager of FCIC, be allocated pro-rata to State awardees for use in broadening the size or scope of awarded projects within the Targeted State, if agreed to by the awardee.

In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. It is expected that the awards will be made approximately 120 days after the application deadline. All awards will be made and agreements finalized no later than September 30, 2009.

*C. Location and Target Audience*

Targeted States serviced by RMA Regional Offices are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for Targeted States projects conducted within the respective Regions.

Billings, MT Regional Office: (WY)

Davis, CA Regional Office: (HI, NV and UT)

Raleigh, NC Regional Office: (CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT and WV)

Applicants must clearly designate the Targeted State where crop insurance educational activities for the project will be delivered in their application in block 12 of the SF–424 form, Application for Federal Assistance. Applications without this designation will be rejected. Applicants may apply to deliver education to producers in more than one Targeted State, but a separate application must be submitted for each Targeted State. Single applications proposing to conduct educational activities in more than one Targeted State will be rejected.

*D. Maximum Award*

Any application that requests Federal funding of more than the amount listed above for a project in a given Targeted State will be rejected.

*E. Project Period*

Projects will be funded for a period of up to one year from the project starting date.

*F. Description of Agreement Award*

Awardee Tasks

In conducting activities to achieve the purpose and goal of this program in a designated Targeted State, the awardee will be responsible for performing the following tasks:

- Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance; (b) inform producers of the availability of crop insurance; (c) inform producers of the crop insurance sales closing dates prior to the deadline; and (d) inform producers and agribusiness leaders in the designated Targeted State of training and informational opportunities.
- Deliver crop insurance training and informational opportunities to agricultural producers and agribusiness professionals in the designated Targeted State in a timely manner prior to crop insurance sales closing dates in order for producers to make informed decisions prior to the crop insurance sales closing dates deadline. This will include organizing and delivering educational activities using instructional materials that have been assembled to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on crop insurance tools and decisions.
- Document all educational activities conducted under the cooperative agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee may also be required to provide information to an RMA-selected contractor to evaluate all educational activities and advise RMA as to the effectiveness of activities.

*G. RMA Activities*

FCIC, working through RMA, will be substantially involved during the performance of the funded project through three of RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to the following activities.

- Collaborate with the awardee in assembling, reviewing, and approving risk management materials for producers in the designated RMA Region.
- Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for risk

management and for informing producers of training and informational opportunities in the RMA Region.

- Collaborate with the awardee on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.
- Conduct an evaluation of the performance of the awardee in meeting the deliverables of the project.
- Assist in the selection of subcontractors and project staff.

Applications that do not contain substantial involvement by RMA will be rejected.

*H. Other Tasks*

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of partners. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

**III. Eligibility Information**

*A. Eligible Applicants*

Eligible applicants include State departments of agriculture, universities, non-profit agricultural organizations, and other public or private organizations with the capacity to lead a local program of crop insurance education for farmers and ranchers within a Targeted State. Individuals are eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (e.g., debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards; a determination of being considered ''high risk''). Applications from ineligible or excluded persons will be rejected in their entirety.

*B. Cost Sharing or Matching*

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

**IV. Application and Submission Information**

*A. Contact to Request Application Package*

Program application materials for the Targeted States Program under this announcement may be downloaded from *http://www.rma.usda.gov/aboutrma/agreements*. Applicants may also request application materials from: Lydia M. Astorga, USDA–RMA–RME, phone: (202) 260–4728, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

*B. Content and Form of Application Submission*

A complete and valid application must be submitted in one package at the time of initial submission, which must include the following:

1. An original and two copies of the completed and signed application
2. A completed and signed OMB Standard Form 424, ''Application for Federal Assistance.''
3. A completed and signed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.''
4. A completed and signed OMB Standard Form 424–B, ''Assurances, Non-constructive Programs.''
5. An electronic copy (Microsoft Word format preferred) on a compact disk (CD) of the completed:

a. Risk Management Education Project Narrative (RME–1 Form). Complete all required parts.

b. ''Written Narrative''—no more than 10 single-sided pages which will provide reviewers with sufficient information to effectively evaluate the merits of the application according to the evaluation criteria listed in this notice. Although a Statement of Work, which is the third evaluation criterion, is to be completed in detail on RME–2 Form, applicants may wish to highlight certain unique features of the Statement of Work for the benefit of the evaluation panel. If your narrative exceeds the page limit, only the first 10 pages will be reviewed.

- No smaller than 12 point font size.
- Use an easily readable font face (e.g., Arial, Geneva, Helvetica, Times Roman).
- 8.5 by 11 inch paper.
- One-inch margins on each page.
- Printed on only one side of paper.
- Held together only by rubber bands or metal clips; not bound or stapled in any other way.

c. ''Budget Narrative,'' describing how the categorical costs listed on SF 424–A are derived. The budget narrative should provide enough detail for reviewers to easily understand how costs were determined and how they relate to the goals and objectives of the project.

d. ''Partnering Plan'' include how each partner will aid in carrying out the project goal providing specific tasks. Letters of commitment from individuals and/or groups, dated no more than 60 days prior to the application date, and should indicate the specific tasks they have agreed to do with the applicant.

e. ''Statement of Work,'' RME–2 Form, which identifies tasks and subtasks in detail, expected completion dates and deliverables, and RMA's substantial involvement role for the proposed project.

6. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''

7. A completed and signed AD–1047, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions.''

8. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace.''

Applications that do not include items 1–8 above will be considered incomplete, will not receive further consideration, and will be rejected. The RME–1 Form, the RME–2 Form, Written Narrative, Budget Narrative, and Partnering Plan must be provided in electronic copy (Microsoft Word format preferred) on a compact disk (CD).

*C. Funding Restrictions*

Cooperative agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative agreement application;

e. Fund political activities;

f. Purchase alcohol, food, beverage, or entertainment;

g. Lend money to support farming or agricultural business operation or expansion;

h. Pay costs incurred prior to receiving a partnership agreement; or

i. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

*D. Limitation on Use of Project Funds for Salaries and Benefits*

Total costs for salary and benefits allowed for projects under this announcement will be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative agreement. One goal of the Targeted States Program is to maximize the use of the limited funding available for crop insurance education for Targeted States. In order to accomplish this goal, RMA needs to ensure that the maximum amount of funds practicable is used for directly providing the educational opportunities. Limiting the amount of funding for salaries and benefits will allow the limited amount of funding to reach the maximum number of farmers and ranchers.

*E. Indirect Cost Rates*

a. Indirect costs allowed for projects submitted under this announcement will be limited to ten (10) percent of the total direct cost of the cooperative agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

b. RMA reserves the right to negotiate final budgets with successful applicants.

c. Applicants may be asked to provide a copy of their indirect cost rate negotiated with their cognizant agency.

*F. Other Submission Requirements*

Mailed submissions: Applications submitted through express, overnight mail or another delivery service will be considered as meeting the announced deadline if they are received in the mailroom at the address stated below for express, overnight mail or another delivery service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants should take this into account because failure of such delivery services will not extend the deadline. Mailed applications will be considered as meeting the announced deadline if they are received on or before the deadline in the mailroom at the address stated below for mailed applications. Applicants using the U.S. Postal Service (USPS) should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington DC area requires. USPS mail sent to Washington DC headquarters is sanitized offsite, which may result in delays, loss, and physical damage to enclosures.

Address when using private delivery services or when hand delivering: Attention: Risk Management Education Program, USDA/RMA/RME, Room 6709, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Address when using U.S. Postal Services: Attention: Risk Management Education Program, USDA/RMA/RME/Stop 0808, Room 6709, South Building, 1400 Independence Ave., SW., Washington, DC 20250–0808.

Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. Regardless of the delivery method you choose, please do so sufficiently in advance of the due date to ensure your application package is received on or before the deadline. E-mailed and faxed applications will not be accepted. Application packages received after the deadline will not receive further consideration and will be rejected.

*G. Electronic Submissions*

Applications transmitted electronically via Grants.gov will be accepted prior to the application date or time deadline. The application package can be accessed via Grants.gov, go to *http://www.grants.gov*, click on ''Find Grant Opportunities,'' click on ''Search Grant Opportunities,'' and enter the CFDA number (found at the beginning of the RFA) to search by CFDA number. From the search results, select the item that correlates to the title of this RFA. If you do not have electronic access to the RFA or have trouble downloading material and you would like a hardcopy, you may contact Lydia M. Astorga, USDA–RMA–RME, phone: (202) 260–4728, fax: (202) 690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*.

If assistance is needed to access the application package via Grants.gov (e.g., downloading or navigating PureEdge forms, using PureEdge with a Macintosh computer, using Adobe), refer to resources available on the Grants.gov Web site first (*http://www.grants.gov/*). Grants.gov assistance is also available as follows:

- Grants.gov customer support. Toll Free: 1–800–518–4726. Business Hours: M–F 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov*.

Applicants who submit their applications via the Grants.gov Web site are not required to submit any hard copy documents to RMA.

When using Grants.gov to apply, RMA strongly recommends that you submit the online application at least two weeks prior to the application due date in case there are problems with the Grants.gov website and you want to submit your application via a mail delivery service. Electronic applications submitted through Grants.gov are due at 11:59 p.m. EDT on the application deadline date.

*H. Acknowledgement of Applications*

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made. When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

**V. Application Review Information**

*A. Criteria*

Applications submitted under the Targeted States program will be evaluated within each Targeted State according to the following criteria:

Project Impacts—Maximum 30 Points

The applicant must demonstrate that the project benefits to farmers and ranchers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Identify the specific actions producers will likely be able to take as a result of the educational activities described in the Statement of Work; (b) identify the specific measures for evaluating results that will be employed in the project; (c) reasonably estimate the total number of producers reached through the various methods and educational activities described in the Statement of Work; and (d) justify such estimates with clear specifics. Reviewers' scoring will be based on the scope and reasonableness of the applicant's clear descriptions of specific, expected actions producers will accomplish, and well-designed methods for measuring the project's results and effectiveness. Applicants using direct contact methods with producers will be scored higher.

Statement of Work—Maximum 20 Points

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in the Description of Agreement Award (refer to Section II Award Information), the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants will obtain a higher score to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this announcement. Applicants are required to submit this Statement of Work on RME–2 Form. All narratives should give estimates of how many producers will be reached through this project. Estimates for non-producers can also be made but they should be separate from the estimates of producers.

Partnering—Maximum 15 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agricultural leaders to carry out a local program of education and information in a designated Targeted State. The applicant is required to establish a written partnering plan that includes how each partner will aid in carrying out the project goal and purpose stated in this announcement and letters of commitment dated no more than 60 days prior to submission of application stating that the partner has agreed to do this work. The applicant must ensure this plan includes a list of all partners working on the project, their titles, and how they will be contributing to the deliverables listed in the agreement. The partnering plan will not count towards the maximum length of the application narrative. Applicants will receive higher scores to the extent that they can document and demonstrate in the written partnering plan: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of farmers and ranchers will be reached within the Targeted State; (c) that partners are contributing to the project and involved in recruiting producers to attend the training; (d) that a substantial effort has been made to partner with organizations that can meet the needs of producers; and (e) statements from each partner regarding the number of producers that partner is committed to recruit for the project that would support the estimates specified under the Project Impacts criterion.

Project Management—Maximum 15 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective Targeted State. The project manager must demonstrate that he/she has the capability to accomplish the project goal and purpose stated in this announcement by (a) having a previous working relationship with the farm community in the designated Targeted State of the application, including being able to recruit approximately the number of producers to be reached in the application and/or (b) having established the capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applicants are encouraged to designate an alternate Project Leader in the event the Project Leader is unable to finish the project. Applicants that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective Targeted State will receive higher rankings.

Budget Appropriateness and Efficiency—Maximum 15 Points

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants will receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer. The applicant must provide information factors such as:

- The allowability and necessity for individual cost categories;
- The reasonableness of amounts estimated for necessary costs;
- The basis used for allocating indirect or overhead costs;
- The appropriateness of allocating particular overhead costs to the proposed project as direct costs; and
- The percent of time devoted to the project for all key project personnel identified in the application. Salaries of project personnel should be requested in proportion to the percent of time that they would devote to the project and cannot exceed 70 percent of the total project budget. Applicants must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section.

Targeted Producers—Maximum 10 Points

Applicants will obtain a higher score to the extent that the project places special emphasis on risk management strategies, education, and outreach specifically targeted at:

- Beginning farmers or ranchers;
- Legal immigrant farmers or ranchers who are attempting to become established producers in the United States;
- Socially disadvantaged farmers or ranchers;
- Farmers or ranchers who—
  - Are preparing to retire; and
  - Are using transition strategies to help new farmers or ranchers get started; and
- New or established farmers or ranchers who are converting production and marketing systems to pursue new markets.

Past Performance—Maximum 10 Points

If the applicant has been an awardee of other Federal or other government grants, cooperative agreements, or contracts in the past three years, the applicant must provide information relating to their past performance in reporting on outputs and outcomes under past or current federal assistance agreements or contracts. The applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. RMA will review past performance reports during the review panel process. RMA reserves the right to add up to 10 points or subtract up to 10 points from applications due to past performance. RMA has established 10 evaluation standards from which your

past performance scores is based upon. The 10 evaluation standards are demonstrated by: (1) Submitting all required documents (educational and promotional) to the RO for review prior to dissemination, (2) developing a training plan or accurate set of instructional materials, (3) delivering the materials to his/her intended audience as specified in the statement of work, (4) being able to draw at least 50 percent of the audience estimated in the application, (5) developing a promotional plan or accurate set of promotional materials and properly promoting the program to his/her intended audience, (6) using the RMA logo when deemed appropriate, (7) participating in quarterly conference calls when asked, (8) notifying RO employees of when crop insurance and risk management education workshops and seminars are being held in their region in timely manner, (9) submitting complete quarterly reports by established deadlines, and (10) achieving the goals and objectives stated upfront in the statement of work. Applicants with very good past performance will receive a score from 6–10 points. Very good past performance is designated by an agreement holder that meets the 10 standards stated above from 70 percent to 100 percent of the time. Applicants with acceptable past performance will receive a score from 1–5 points when the 10 standards are met 40 percent to 69 percent of the time. Applicants with unacceptable past performance will receive a score of zero to minus 10 points when an applicant meets the 10 standards less than 39 percent of the time. Applicants without relevant past performance information will receive a neutral score of the mean number of points of all applicants with past performance. These past performance points will be applied only to applications that the review panel scored above the minimum score. Applications receiving less than the minimum score required to be eligible for potential funding will not receive past performance points.

Projected Audience Description—Maximum 5 Points

The applicant must clearly identify and describe the targeted audience for the project. Applicants will receive higher scores to the extent that they can reasonably and clearly describe their target audience and why the audience would choose to participate in the project. The applicant must describe why the proposed audience wants the information the project will deliver and how they will benefit from it.

*B. Review and Selection Process*

Applications will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration during the next process. Applications that meet announcement requirements will be sorted into the Targeted State in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. After considering the merits of all applications within a Targeted State, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the Targeted State according to the scores received. A lottery will be used to resolve any instances of a tie score that might have a bearing on funding recommendations. If such a lottery is required, the names of all tied applicants will be entered into a drawing. The first tied applicant drawn will have priority over other tied applicants for funding consideration.

The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative agreements for each Targeted State. Funding will not be provided for an application receiving a score less than 60. An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect to not fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

**VI. Award Administration Information**

*A. Award Notices*

Following approval by the awarding official of RMA of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into cooperative agreements with those awardees. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project. The effective date of the agreement shall be the date the agreement is executed by both parties and it shall remain in effect for up to one year or through September 30, 2010, whichever is later. After a cooperative agreement has been signed, RMA will extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the awardee by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made and awardees announced publicly. Reasons for denial of funding can include, but are not limited to, incomplete applications, applications with evaluation scores below 60, or applications with evaluation scores that are lower than those of other applications in a Targeted State.

*B. Administrative and National Policy Requirements*

1. Requirement To Use Program Logo

Awardees of cooperative agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials, if appropriate.

2. Requirement to Provide Project Information to an RMA-Selected Representative

Awardees of cooperative agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any representative selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a cooperative agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Awardees of cooperative agreements are subject to audit.

7. Prohibitions and Requirements with Regard to Lobbying

Section 1352 of Public Law 101–121, enacted on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires awardees and any subcontractors: (1) To certify that they have neither used nor will use any appropriated funds for payment of lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom awardees or their subcontractors will pay with profits or other non-appropriated funds on or after December 22, 1989; and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for non-compliance. A copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII. Agency Contact.

8. Applicable OMB Circulars

All cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

9. Requirement to Assure Compliance with Federal Civil Rights Laws

Project leaders of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws and to assure USDA and RMA that the awardee is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), 7 CFR Part 15, and USDA regulations promulgated thereunder, 7 CFR 1901.202. RMA requires that awardees submit an Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Conference

RMA requires that project leaders attend a post award conference, if conducted, to become fully aware of cooperative agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility. In their applications, applicants should budget for possible travel costs associated with attending this conference.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that project leaders upload digital copies of all risk management educational materials developed because of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting, if electronically reporting. RMA will be clearly identified as having provided funding for the materials. Projects leaders not reporting electronically will not be required to post educational materials onto the National AgRisk Education Library, but are highly encouraged to do so.

12. Requirement To Submit Proposed Results to the National AgRisk Education Library

RMA requires that project leaders submit results of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting if electronically reporting. Projects leaders not reporting electronically will not be required to post results onto the National AgRisk Education Library, but are highly encouraged to do so.

13. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan should address the concept of continuing operations as they relate to the project. This should include the roles, responsibilities, and contact information for the project team and

individuals serving as back-ups in case of a pandemic outbreak.

*C. Reporting Requirements*

Awardees will be required to submit quarterly progress reports, quarterly financial reports (OMB Standard Form 269), and quarterly Activity Logs (RMA 300 Form) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

Awardees will be required to submit prior to the award:

- A completed and signed Assurance Agreement (Civil Rights).
- A completed and signed Faith-Based Survey on EEO.

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** Applicants and other interested parties are encouraged to contact: Lydia M. Astorga, USDA–RMA–RME, phone: 202–260–4728, fax: 202–690–3605, e-mail: *RMA.Risk-Ed@rma.usda.gov*. You may also obtain information regarding this announcement from the RMA website at: *http://www.rma.usda.gov/aboutrma/agreements/*.

**VIII. Other Information**

*A. Dun and Bradstreet Data Universal Numbering System (DUNS)*

A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. The Office of Management and Budget published a notice of final policy issuance in the Federal Register June 27, 2003 (68 FR 38402) that requires a DUNS number in every application (i.e., hard copy and electronic) for a grant or cooperative agreement on or after October 1, 2003. Therefore, potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov*. Please note that the registration may take up to 14 business days to complete.

*B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals*

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit ''Get Started'' at the Web site, *http://www.grants.gov*. Allow a minimum of 5 business days to complete the CCR registration.

*C. Related Programs*

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.455 (Community Outreach and Assistance Partnerships), and CFDA No. 10.457 (Commodity Partnerships For Risk Management Education). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Signed in Washington, DC on April 2, 2009.

**William J. Murphy,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. E9–7895 Filed 4–7–09; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### Proposed Information Collection; Comment Request; Survey: Ocean Freight Revenues and Foreign Expenses of United States Carriers; Survey: U.S. Airline Operators' Foreign Revenues and Expenses

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before 5 p.m. June 8, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Edward Dozier, Current Account Services Branch, Balance of Payments Division, (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9559; fax: (202) 606–5314; or via e-mail at *edward.dozier@bea.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Bureau of Economic Analysis (BEA) is responsible for the compilation of the U.S. international transactions accounts (ITAs), which it publishes quarterly in news releases, on its Web site, and in its monthly journal, the *Survey of Current Business*. These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. They are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in these surveys is used to develop the ''transportation'' portion of the ITAs. Potential respondents are U.S. ocean and air carriers engaged in international transportation of goods and/or passengers. The information is collected on a quarterly basis from U.S. ocean and air carriers whose total annual covered revenues or total annual covered expenses are, or are expected to be, $500,000 or more. U.S. ocean and air carriers whose total annual covered revenues and total annual covered expenses are, or are expected to be, each below $500,000 are exempt from reporting.

Without this information, an integral component of the ITAs would be omitted. No other government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and foreign expenses or U.S. airline operators' foreign revenues and expenses. There are no changes proposed to the form or instructions.

**II. Method of Collection**

The survey forms will be sent to respondents each quarter via U.S. mail; the surveys are also available from our Web site. Respondents return the surveys one of four ways: U.S. mail, electronically using BEA's electronic collection system (eFile), fax or email. Responses will be due within 50 days after the close of each calendar quarter.

**III. Data**

*OMB Number:* 0608–0011.

*Form Number:* BE–30 and BE–37.
*Type of Review:* Regular submission.
*Affected Public:* Businesses or other for-profit organizations.
*Estimated Number of Respondents:* 292.
*Estimated Time per Response:* 5 hours (BE–30); 4 hours (BE–37).
*Estimated Total Annual Burden Hours:* 1,004.
*Estimated Total Annual Cost to Public:* $0.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 3, 2009.

**Glenna Mickelson,**

*Management Analyst, Office of Chief Information Officer.*

[FR Doc. E9–7933 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–849**

### Cut–to–Length Carbon Steel Plate, from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review

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

**SUMMARY:** In response to a request from Hunan Valin Xiangtan Iron &Steel Co. Ltd. (''Valin Xiangtan''), on January 17, 2008, the Department of Commerce (''Department'') published in the **Federal Register** a notice announcing the initiation of a new shipper review (''NSR'') of the antidumping duty order on certain cut–to–length carbon steel plate (''CTL plate'') from the People's Republic of China (''PRC'') covering the period November 1, 2006, through October 31, 2007. *See Certain Cut–to–Length Carbon Steel Plate From the People's Republic of China; Initiation of New Shipper Review*, 73 FR 3236 (January 17, 2008). On April 18, 2008, the Department explained that it was expanding the period of review (''POR'') until November 30, 2007, pursuant to 19 CFR 351.214(f)(2)(ii) in order to cover Valin Xiangtan's entry of the subject merchandise.[1] Because Valin Xiangtan's sale of subject merchandise is covered by both the NSR and the November 1, 2007 through October 31, 2008 administrative review of the order on CTL plate from the PRC, pursuant to section 351.214(j)(1) of the Department's regulations, the Department is rescinding this new shipper review.

**EFFECTIVE DATE:** April 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Demitri Kalogeropoulos or Trisha Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2623 and (202) 482–4852, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 17, 2008, the Department initiated the new shipper review of CTL plate for Valin Xiangtan. *See Certain Cut–to–Length Carbon Steel Plate From the People's Republic of China; Initiation of New Shipper Review*, 73 FR 3236 (January 17, 2008). On December 24, 2008, the Department initiated an administrative review of the antidumping duty order on CTL plate with respect to Valin Xiangtan for the period November 1, 2007, through October 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008).

**Rescission of New Shipper Review**

Section 351.214(j)(1) of the Department's regulations states that ''if a review (or a request for review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or request for a review) under this section, the Secretary may, after consulting with the exporter or producer: (1) rescind, in whole or part, a review in progress under this subpart…''. In the instant case, the entry made by Valin Xiangtan covered by the new shipper review is also covered by the period of review of the administrative review that the Department initiated on December 24, 2008. *See* 73 FR 79055. Thus, because the Department is conducting an administrative review and a new shipper review that covers the same merchandise, after consultation with the exporter,[2] the Department is rescinding the new shipper review for Valin Xiangtan. We will review Valin Xiangtan's sale covered by the NSR during the course of the administrative review.

**Notification Regarding Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written 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 the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: April 1, 2009.

**Gary Taverman,**

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

[FR Doc. E9–7979 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] *See* Memorandum to Wendy J. Frankel, Office Director, AD/CVD Operations, Office 8, Import Administration through Blanche Ziv, Program Manager, from Demitri Kalogeropoulos, International Trade Analyst, regarding ''Expansion of the Period of Review,'' dated April 18, 2008.

[2] *See* Letter from Wendy J. Frankel, Director, Office 8, Antidumping and Countervailing Duty Operations to Hunan Valin Xiangtan Iron &Steel Co., Ltd., dated March 27, 2009. *See also* Memorandum to the File from Erin Begnal, Program Manager, regarding ''Meeting with Counsel to Hunan Valin Xiangtan Iron &Steel Co., Ltd.,'' dated March 30, 2009.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–836**

### Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request from Geo Specialty Chemicals, Inc. (''GSC''), a domestic glycine producer, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on glycine from the People's Republic of China (''PRC''). This review covers Nantong Dongchang Chemical Industry Corporation (''Nantong Dongchang'') and Baoding Mantong Fine Chemistry Co., Ltd. (''Baoding Mantong''). The period of review (''POR'') is March 1, 2007, through February 29, 2008. We did not receive any response from Nantong Dongchang to the Department's antidumping questionnaire in this administrative review; therefore, we have preliminarily determined to apply facts otherwise available with an adverse inference (''AFA'') to Nantong Dongchang. In addition, we have preliminarily determined that Baoding Mantong made sales below normal value (''NV''). The preliminary results are listed below in the section titled ''Preliminary Results of the Review.'' If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assess the *ad valorem* margins against the entered value of each entry of the subject merchandise during the POR, where applicable.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** April 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362, or (202) 482–3019, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. *See Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1995). On March 3, 2008, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the POR of March 1, 2007, through February 29, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 11389 (March 3, 2008). On March 28, 2008, in accordance with 19 CFR 351.213(b), GSC requested that the Department conduct an administrative review of sales of merchandise by the following 24 companies: A.H.A. International Company, Ltd.; Amol Biotech Limited; Antai Bio–Tech Co. Limited; Baoding Mantong; Beijing Jian Li Pharmaceutical Company; Degussa Rexim (Nanning); Du–Hope International Group; Hua Yip Company Inc.; Hubei Guangji Pharmaceutical Co.; Huzhou New Century International Trade Co.; Jizhou City Huayang Chemical Company, Ltd.; Jiangxi Ansun Chemical Technology, Ltd. (''Jiangxi Ansun''); Nantong Dongchang; Nantong Weifu Foreign Trade Co., Ltd.; Pudong Trans USA, Inc.; Qingdao Samin Chemical Company, Ltd.; Santec Chemicals Corporation; Schenker China Ltd.; Shanghai Freemen Lifescience Co., Ltd.; Sinosweet Co., Ltd.; Suzhou Everich Imp. & Exp. Co., Ltd.; Taigene Global Enterprises Ltd.; Tianjin Tiancheng Pharmaceutical Co.; and Wenda Co., Ltd. In response to this request, the Department published the initiation of the antidumping duty administrative review on glycine from the PRC on April 25, 2008. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 73 FR 22337 (April 25, 2008).

On May 8, 2008, Jiangxi Ansun notified the Department that it had no exports and no sales of glycine to the United States during the POR. On July 16, 2008, the Department selected Baoding Mantong and Nantong Dongchang as mandatory respondents. *See* Memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, through Angelica L. Mendoza, Program Manager, AD/CVD Operations, Office 7, from Dena Crossland, International Trade Analyst, AD/CVD Operations, Office 7, regarding the 2007/2008 Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Selection of Respondents (''Respondent Selection Memo''), dated July 16, 2008. On July 21, 2008, petitioner GSC timely withdrew its request for review for all of the companies except Baoding Mantong and Nantong Dongchang. On August 29, 2008, the Department rescinded the review with respect to all of the companies except Baoding Mantong and Nantong Dongchang. *See Glycine from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50940 (August 29, 2008). On December 2, 2008, the Department extended the deadline for the preliminary results to March 31, 2009. *See Glycine from the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 73244 (December 2, 2008).

## Questionnaires

On July 16, 2008, the Department issued standard non–market economy (''NME'') antidumping duty questionnaire, including the separate rates section of that questionnaire, to Baoding Mantong and Nantong Dongchang.

On August 7, 2008, a former representative of Nantong Dongchang notified the Department that Nantong Dongchang would not participate in this administrative review. See Letter from deKeiffer & Horgan to the Department, dated August 7, 2008. On August 15, 2008, the Department sent a questionnaire directly to Nantong Dongchang in the PRC, and requested that it notify the Department immediately, in writing, if it did not intend to participate in this administrative review. We did not receive any response from Nantong Dongchang. We confirmed that Nantong Dongchang received the Department's questionnaire on August 21, 2008. *See* Memorandum to the File through Angelica L. Mendoza, Program Manager, AD/CVD Operations, Office 7, from Dena Crossland, Case Analyst, AD/CVD Operations, Office 7, regarding Nantong Dongchang Chemical Industry Corporation (''Nantong Dongchang''): Confirmation of Receipt of Antidumping Questionnaire (''Questionnaire''), dated March 18, 2009.

Baoding Mantong submitted its section A questionnaire response on August 13, 2008, and its section C and D questionnaire responses on September 9, 2008. Baoding Mantong submitted supplemental questionnaire responses on September 24, 2008, October 23, 2008, January 26, 2009, March 10, 2009, and March 20, 2009.

## Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (''the Act''), directs the Department to calculate individual dumping margins for each known producer or exporter of the subject merchandise. Because it was not practicable for the Department to individually examine all of the companies covered by the review, the Department limited its examination to a reasonable number of producers/exporters, accounting for the greatest volume, pursuant to section 777A(c)(2)(B) of the Act. Therefore, the

Department selected Nantong Dongchang and Baoding Mantong as the mandatory respondents in this review. *See* Respondent Selection Memo. However, because the Department is now individually examining all of the companies in which a request for review remains pending (*i.e.*, Baoding Mantong and Nantong Dongchang), respondent selection is no longer an issue for purposes of these preliminary results.

**Non–Market Economy Country Status**

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent to Rescind the 2004/2005 New Shipper Review*, 71 FR 26736, 26739 (May 8, 2006), which was unchanged in the final results (*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 (November 14, 2006)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country and Factors**

On August 19, 2008, the Department's Office of Policy issued a memorandum listing India, Indonesia, the Philippines, Colombia, and Thailand as economically comparable surrogate countries for this review. On August 22, 2008, we invited interested parties to comment on the Department's surrogate country selection and to submit publicly available information to value the factors of production (''FOPs''), and attached the memorandum outlining the appropriate surrogate countries in this case based solely on economic comparability. *See* Letter to All Interested Parties, from Angelica L. Mendoza, Program Manager, Office 7, Import Administration, regarding 2007–2008 Administrative Review of Glycine from the People's Republic of China (''China''): Surrogate Country List, at Attachment One (''Surrogate Country Letter Attachment''). On November 7, 2008, Baoding Mantong and GSC submitted information for the Department to consider in valuing the FOPs. On November 17, 2008, and February 17, 2009, GSC submitted comments regarding the surrogate value information placed on the record. All surrogate value data submitted by both parties were from Indian sources.

When the Department investigates imports from a NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, 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 factors of production, the Department shall utilize, to the extent possible, the prices or costs of 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.

India is among the countries comparable to the PRC in terms of overall economic development. In addition, based on publicly available information placed on the record (i.e., export data as found in the Surrogate Country Letter Attachment), India is a significant producer of the subject merchandise. Furthermore, India has been the primary surrogate country in past segments of this case, and both GSC and Baoding Mantong submitted surrogate values based solely on Indian data that are contemporaneous to the POR.

Given that India meets the criteria listed in sections 773(c)(4)(A) and (B) of the Act, interested parties placed only Indian surrogate value information on the record of this review, and our use of India as the surrogate country in past reviews of glycine, we have selected India as the surrogate country for purposes of these preliminary results. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in Memorandum to the File through Angelica L. Mendoza, Program Manager, AD/CVD Operations, Office 7, from Dena Crossland, International Trade Compliance Analyst, AD/CVD Operations, Office 7, Administrative Review of Glycine from the People's Republic of China: Surrogate Values for the Preliminary Results, March 31, 2009 (''Surrogate Values Memo''). In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an antidumping administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of these preliminary results.[1]

**Scope of the Order**

The product covered by the order is glycine, which is a free–flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This review covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under the order is dispositive.

**Separate Rate**

A designation of a country as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in a NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585

[1] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than 10 days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

(May 2, 1994) (''*Silicon Carbide*''). With respect to Nantong Dongchang, as noted above, Nantong Dongchang has not participated in this administrative review; therefore Nantong Dongchang has failed to demonstrate its eligibility for a separate rate. *See* ''PRC–Wide Rate and Facts Otherwise Available'' section, below.

*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; and 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. In the prior administrative review for this case, the Department granted a separate rate to Baoding Mantong. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 55814 (September 26, 2008). However, it is the Department's policy to evaluate requests for a separate rate individually, regardless of whether the respondent received a separate rate in the past. *See Manganese Metal From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440, 12441–12442 (March 13, 1998).

In this review, Baoding Mantong submitted a complete response to the separate rates section of the Department's NME questionnaire. *See* Baoding Mantong section A questionnaire response, August 13, 2008. In its questionnaire response, Baoding Mantong includes PRC government laws and regulations with respect to corporate ownership, its business license, and narrative information regarding the company's operations and selection of management. The information provided by Baoding Mantong supports a finding of a *de jure* absence of governmental control over their export activities based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over Baoding Mantong, as demonstrated by the PRC laws placed on the record of this review. No party submitted information to the contrary. Accordingly, we preliminarily find an absence of *de jure* control.

*B. Absence of De Facto Control*

The absence of de facto governmental control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Baoding Mantong submitted evidence indicating an absence of de facto governmental control over its export activities. Specifically, this evidence indicates that: (1) Baoding Mantong sets its own export prices independent of the government and without the approval of a government authority; (2) Baoding Mantong retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Baoding Mantong has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, the Department preliminarily finds that Baoding Mantong has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

**PRC Wide Rate and Facts Otherwise Available**

Nantong Dongchang, which was selected as a mandatory respondent, did not respond to the Department's request for information, and thus has failed to demonstrate its eligibility for a separate rate. The PRC–wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate. *See* ''Separate Rates'' section above. Companies that have not demonstrated their entitlement to a separate rate are appropriately considered to be part of the PRC–wide entity. Therefore, we determine it is necessary to review the PRC–wide entity, because Nantong Dongchang is subject to the instant proceeding. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act additionally states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information; and (5) the information can be used without undue difficulties.

As addressed below for Nantong Dongchang, we find that the PRC–wide entity (which includes Nantong Dongchang) did not respond to our request for information. Therefore, we find it necessary, under section 776(a)(2) of the Act, to use facts

otherwise available as the basis for the preliminary results of this review for the PRC–wide entity.

On August 15, 2008, the Department issued an antidumping duty questionnaire directly to Nantong Dongchang in the PRC. In the cover letter that accompanied that questionnaire, we requested that Nantong Dongchang notify the Department immediately, in writing, if it did not intend to participate in this administrative review. Additionally, we stated in the cover letter that if Nantong Dongchang did not participate in this administrative review, we may apply facts otherwise available with an adverse inference pursuant to sections 776(a) and (b) of the Act. We did not receive any response from Nantong Dongchang. Accordingly, pursuant to sections 776(a)(2)(A),(B), and (C) of the Act, the Department preliminarily finds that the application of facts available is appropriate for these preliminary results.

Pursuant to section 776(b) of the Act, we find that the PRC–wide entity, which includes Nantong Dongchang, failed to cooperate by not acting to the best of its ability. As noted above, Nantong Dongchang did not provide the requested information, despite the Department's request that it do so. This POR–specific information was in the sole possession of Nantong Dongchang, and could not be obtained otherwise. Therefore, because Nantong Dongchang, and thus the PRC–wide entity, refused to participate in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC–wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC–wide entity, including Nantong Dongchang, will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

**Selection of Adverse Facts Available (''AFA'') Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19506 (April 21, 2003). The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (''*Rhone Poulenc*''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 680 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); *Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) (''SAA''), at 870; *see also Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004); *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 155.89 percent, the highest rate on the record of any segment of the proceeding, to the PRC–wide entity, which includes Nantong Dongchang, as AFA. *See, e.g., Glycine from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 58185 (October 5, 2005) (''*Glycine Sunset Results*''). As discussed further below, this rate has been corroborated.

**Corroboration of Secondary Information Used as AFA**

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value. The Department has determined that to have probative value, information must be reliable and relevant. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. SAA, at 870. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003) unchanged in *Notice of Final Determination of Sales at Less*

*Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560 (November 5, 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The AFA rate we are applying for the current review, 155.89 percent, the PRC–wide rate established in the LTFV investigation, was determined to have probative value during the 2005 sunset review of glycine from the PRC, as the Department found it to be the only margin that reflects the actions of the PRC–wide entity absent the discipline of an order. *See Glycine from the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 58185 (October 5, 2005) and accompanying Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Glycine from the People's Republic of China; Final Results, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, at Comment 2 (''*Glycine Sunset Review*''). Furthermore, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996). Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). As noted, the AFA rate we are applying for the current review was determined to have probative value during the 2005 sunset review of glycine from the PRC, as the Department found it to be the only margin that reflects the actions of the PRC–wide entry absent the discipline of an order. *See Glycine Sunset Review*. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriate for use as adverse facts available, we determine that this rate has relevance.

As the AFA rate is both reliable and relevant, we find that it has probative value. As a result, the Department preliminarily determines that the AFA margin is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity, which includes Nantong Dongchang. Because these are the preliminary results of the review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for Nantong Dongchang. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000) unchanged in Notice of *Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 42669 (July 11, 2000).

**Normal Value Comparisons**

To determine whether Baoding Mantong's sales of the subject merchandise to the United States were made at a price below NV, we compared its United States prices to a normal value, as described in the ''United States Price'' and ''Normal Value'' sections of this notice below.

**United States Price**

A. Export Price

In accordance with section 772(a) of the Act, we calculated the export price (''EP'') for certain sales to the United States for Baoding Mantong because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. We based EP on free–on-board port or delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for movement expenses, where appropriate. Movement expenses included expenses for foreign inland freight from plant to port of exportation, foreign brokerage and handling, international freight, and marine insurance. Foreign inland freight, foreign brokerage and handling, and marine insurance were provided by a NME vendor and, thus, as explained in the section below, we based the amounts of the deductions for these movement charges on values from a surrogate country.

For international freight, for certain sales, we used the reported expenses because Baoding Mantong used a market–economy freight carrier and/or paid for those expenses in a market–economy currency. Otherwise, where Baoding Mantong used a NME freight carrier and/or paid for this expense in a NME currency, we valued international freight expenses using U.S. dollar freight quotes that the Department obtained from Maersk Sealand (''Maersk''), a market–economy shipper. We obtained quotes from Maersk for shipments from the PRC port of export and the U.S. port of import reported by Baoding Mantong for its U.S. sales. Because these data were not contemporaneous to the POR, we adjusted them for inflation using the U.S. wholesale price indices (''WPI'') as published in the International Financial Statistics (''IFS'') Online Service maintained by the Statistics Department of the International Monetary Fund at the website http://www.imfstatistics.org. For a detailed description of all adjustments, see Surrogate Values Memo.

We valued marine insurance using a publicly available price quote from RJG Consultants, a marine insurance provider at http://www.rjgconsultants.com/insurance.html. We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by: Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India; Kejirwal Paper Ltd. in the less than fair value investigation of certain lined paper products from India; and Essar Steel in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. The final results for these reviews and investigations can be found at: *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India, 71 FR 19706 (April 17, 2006) (unchanged in final results*, 71 FR 45012 (August 8, 2006)),

and *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, 71 FR 40694 (July 18, 2006)). We identify the source used to value foreign inland freight in the ''Normal Value'' section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for these values using the WPI for India.

**Normal Value (''NV'')**

1. Methodology

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from a NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

2. Factor Valuations

In accordance with section 773(c)(1) of the Act, we calculated NV based on FOPs reported by Baoding Mantong for the POR. To calculate NV, we multiplied the reported per unit factor–consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Indian import data, we calculated freight based on the reported distance from the supplier to the factory.

With regard to surrogate values from import statistics, we disregard prices that we have reason to believe or suspect may be subsidized, such as the prices of inputs from Indonesia, South Korea and Thailand. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision memorandum at Comment 7 (''*CTVs from the PRC*''). The legislative history provides guidance that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation. Instead, the Department is to base its decision on information that is available to it at the time it makes its determination. See H.R. Rep. 100–576 (1988) at 590. Therefore, based on the information currently available, we have not used prices from these countries in calculating the surrogate values based on Indian import data. We have also disregarded Indian import data from countries that the Department has previously determined to be NME countries, as well as imports from unspecified countries. *See CTVs from the PRC*.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index for the subject country. *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review*, 71 FR 38617, 38619 (July 7, 2006), unchanged in final, *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review*, 71 FR 66910 (November 17, 2006). Therefore, where publicly available information contemporaneous with the POR with which to calculate surrogate values could not be obtained, surrogate values were adjusted using the WPI for India. Surrogate values denominated in foreign currencies were converted into U.S. dollars (''USD'') using the applicable average exchange rate based on exchange rate data from the Department's website. In accordance with 19 CFR 351.301(c)(3)(ii), for the final determination in an administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of the preliminary results. *See* Surrogate Values Memo.

The Department used Indian Import Statistics to value the raw material and packing material inputs that Baoding Mantong used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all surrogate values used for Baoding Mantong, see Surrogate Values Memo.

*Raw Materials:*

To value liquid chlorine, the Department used the values reported for sales turnover of liquid chlorine from the publicly available 2007–2008 financial reports of Kanoria Chemicals & Industries Limited (''Kanoria''), Chemfab Alkalies Ltd. (''Chemfab''), and Tata Chemicals Limited (''Tata''), three chemical companies in India that use and/or produce liquid chlorine. On November 7, 2008, Baoding Mantong submitted the Kanoria financial report and GSC submitted the Chemfab and Tata financial reports. *See* Surrogate Values Memo.

Petitioner and Baoding Mantong both placed data from *Chemical Weekly* on the record to value acetic acid. As we did in the previous administrative review and consistent with these submissions, the Department has applied a surrogate value for acetic acid using the values submitted by the parties from *Chemical Weekly. See* Surrogate Values Memo.

*By–Product:*

Petitioner and Baoding Mantong both placed data from *Chemical Weekly* on the record to value hydrochloric acid. Consistent with past practice and these submissions, the Department has applied a surrogate value for hydrochloric acid using the values submitted by the parties from Chemical Weekly. *See* Surrogate Values Memo.

*Energy:*

Baoding Mantong reported the consumption of water, electricity, and coal as energy inputs consumed in the production of glycine. To value water, we calculated the average water rates from various regions as reported by the Maharashtra Industrial Development Corporation, http://midcindia.org, dated June 1, 2003, and inflated the value for water to be contemporaneous to the POR. *See* Surrogate Values Memo. To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled ''Electricity Tariff & Duty and Average Rates of Electricity

Supply in India,'' dated July 2006. These electricity rates represent actual country–wide, publicly available information on tax–exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POR, we inflated the values using the WPI. *See* Surrogate Values Memo. To value steam coal, we used the 2004/2005 Tata Energy Research Institute's Energy Data Directory & Yearbook (''TERI Data''). The annual TERI Data publication covers all sales of all types of coal made by Coal India Limited and its subsidiaries, and the prices are exclusive of duties and taxes. Because the value was not contemporaneous with the POR, the Department adjusted the rate for inflation using the WPI. *See* Surrogate Values Memo.

*Financial Ratios:*

To value the surrogate financial ratios for factory overhead, selling, general & administrative expenses, and profit, the Department relied on publicly available information contained in the financial statements for the following two companies: Jupiter Bioscience Limited (''Jupiter''), for fiscal year 2007–2008; and Divi's Laboratories Ltd. (''Divi''), for fiscal year 2007–2008. Both financial statements were submitted by GSC on November 7, 2008. The annual report covers the period April 1, 2007, to March 31, 2008, covering 11 of the 12 months of the POR. We have determined that the financial statements for both Jupiter and Divi are appropriate for use in these preliminary results because both Jupiter and Divi are producers of comparable merchandise and their financial data are largely contemporaneous with the POR. *See* Surrogate Values Memo.

*Wage Rate:*

Because of the variability of wage rates in countries with similar levels of per capita gross national product, 19 CFR 351.408(c)(3) requires the use of a regression–based wage rate. Therefore, to value the labor input, we used the PRC's regression–based wage rate published on Import Administration's website. The source of the wage rate data on the Import Administration's website is the International Labour Organization (''ILO''), Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. *See* Expected Wages of Selected NME Countries (revised June 23, 2008) (available at http://ia.ita.doc.gov/wages/index.html). Since this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor. *See* also Surrogate Values Memo.

*Movement Expenses:*

To value truck freight, we used a per–unit average rate calculated from data on the following website: http://www.infobanc.com/logistics/logtruck.htm. The logistics section of this website contains inland freight truck rates between many large India cities. Since the truck rate value is not contemporaneous with the POR, we deflated the rate using WPI. *See* Surrogate Values Memo.

For a comprehensive list of the sources and data used to determine the surrogate vales for the FOPs, by–products, and the surrogate financial ratios for factory overhead, selling, general and administrative expenses, and profit, *see* Surrogate Values Memo.

**Currency Conversion**

We made currency conversions into USD, 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.

**Preliminary Results of the Review**

The Department has determined that the following preliminary dumping margins exist for the period March 1, 2007, through February 29, 2008:

GLYCINE FROM THE PRC

| Manufacturer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Baoding Mantong Fine Chemistry Co., Ltd. ... | 49.12 |
| PRC–Wide Rate (which includes Nantong Dongchang Chemical Industry Corporation) | 155.89 |

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d).

Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. *See* 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we intend to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales, where appropriate. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

**Cash Deposit Requirements**

Further, the following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by

section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Baoding Mantong, the cash deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise (including Nantong Dongchang), which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC wide rate of 155.89 percent; (4) for all non–PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice also 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 this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: March 31, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–7986 Filed 4–7–09; 8:45 am]

**BILLING CODE: 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(C–533–829)**

### Final Results of Expedited Sunset Review of Countervailing Duty Order: Prestressed Concrete Steel Wire Strand from India

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

**SUMMARY:** On December 1, 2008, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on prestressed concrete steel wire strand (''PC strand'') from India pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five–Year (''Sunset'') Reviews*, 73 FR 72770 (December 1, 2008). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and an inadequate response (in this case, no response) from respondent interested parties, the Department decided to conduct an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

**EFFECTIVE DATE:** April 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Eric Greynolds or Brandon Farlander, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington; DC 20230; telephone: (202) 482–6071 or (101) 482–0182, respectively.

**SUPPLEMENTAL INFORMATION:**

**Background**

On December 1, 2008, the Department initiated a sunset review of the CVD order on *PC strand from India pursuant to section 751(c) of the Act. See Initiation of Five–Year (''Sunset'') Reviews*, 73 FR 72770 (December 1, 2008). The Department received a notice of intent to participate on behalf of American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corporation (collectively, ''petitioners''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status under section 771(9)(C) of the Act, as domestic producers of PC strand.

The Department received a complete substantive response from the petitioners within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of this order.

**Scope of the Order**

The merchandise subject to this order is prestressed concrete steel wire (''PC strand''), which is steel strand produced from wire of non–stainless, non–galvanized steel, which is suitable for use in prestressed concrete (both pre–tensioned and post–tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under this order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

**Analysis of Comments Received**

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated March 31, 2009, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B–1117 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Final Results of Review**

The Department determines that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

| Producers/Exporters | Net Countervailable Subsidy (percent) |
|---|---|
| All Manufacturers/Producers/Exporters ..... | 62.92 |

**Notification Regarding Administrative Protective Order**

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is

hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 30, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–7983 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Proposed Information Collection; Comment Request; Generic Clearance for Program Evaluation Data Collections

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before June 8, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Darla Yonder, Management Analyst, NIST, 100 Bureau Drive, MS 1710, Gaithersburg, MD 20899–1710, telephone 301–975–4064 or via e-mail to *darla.yonder@nist.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys, both quantitative and qualitative, designed to evaluate our current programs from a customer's perspective. NIST proposes to perform program evaluation data collections by means of, but not limited to, focus groups, reply cards that accompany product distributions, and Web-based surveys and dialogue boxes that offer customers the opportunity to express their views on the programs they are asked to evaluate. NIST will limit its inquiries to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

**II. Method of Collection**

NIST will collect this information by mail, fax, electronically, telephone and person-to-person sessions.

**III. Data**

*OMB Control Number:* 0693–0033.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for profit organizations, not-for-profit institutions, individuals or households, Federal Government, State, Local, or Tribal Government.

*Estimated Number of Respondents:* 12,000.

*Estimated Time per Response:* Varied dependent upon the data collection. The response time may vary from two minutes for a response card or two hours for focus group participation. The average time per response is expected to be 30 minutes.

*Estimated Total Annual Burden Hours:* 3,022.

*Estimated Total Annual Cost to Public:* $0.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 3, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–7897 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Proposed Information Collection; Comment Request; Generic Clearance for Usability Data Collections

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before June 8, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Darla Yonder, Management Analyst, NIST, 100 Bureau Drive, MS 1710, Gaithersburg, MD 20899–1710, telephone 301–975–4064, or via e-mail to *darla.yonder@nist.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of data collection efforts—both quantitative and qualitative—to determine requirements and evaluate usability and utility of NIST research for measurement and standardization work. These data collection efforts may include, but may not be limited to electronic methodologies, empirical studies, video and audio data collections, interviews, and questionnaires. For example, data collection efforts will be conducted at search and rescue training exercises for rescue workers using robots. Other planned data collection efforts include

evaluations of software for use by the intelligence community. Participation will be strictly voluntary. The regulated information will not be collected. The results of the data collected will be used to guide NIST research. Steps will be taken to ensure anonymity of respondents in each activity covered under this request.

**II. Method of Collection**

NIST will collect this information by electronic means when possible, as well as by mail, fax, telephone, and person-to-person interviews.

**III. Data**

OMB *Control Number:* 0693–0043.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households; State, local or tribal government, Federal government.

*Estimated Number of Respondents:* 2,000.

*Estimated Time per Response:* Varied, dependent upon the data collection method used. The response time will vary from 15 minutes to fill out a questionnaire to three hours to participate in an empirical study. Average response time is expected to be 1 hour.

*Estimated Total Annual Burden Hours:* 2,000.

*Estimated Total Annual Cost to Public:* $0.

**IV. Request for Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 3, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9–7898 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO45**

### Marine Mammals; File No. 14241

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Dr. Peter Tyack, Woods Hole Oceanographic Institute, Woods Hole, MA, has applied in due form for a permit to conduct research on marine mammals.

**DATES:** Written, telefaxed, or e–mail comments must be received on or before May 8, 2009.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14241 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978) 281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e–mail. The mailbox address for providing e–mail comments is *NMFS.Pr1Comments@noaa.gov*. Include ''File No. 14241'' in the subject line of the e–mail comment as a document identifier.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Carrie Hubard, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to conduct research on cetacean behavior, sound production, and responses to sound. The research will contribute to conservation and management of the subject species by (1) collecting data on vocal behavior critical for estimating how well passive acoustic monitoring can detect and estimate abundance for different species, (2) determining what characteristics of exposure to specific sounds evoke what responses in marine mammals, and (3) studying behavioral responses including those that might relate to potential risks of stranding or entanglement in fishing gear. The research methods include tagging marine mammals with an advanced digital sound recording tag that records the acoustic stimuli an animal hears and measures vocalization, behavior, and physiological parameters. Another method involves conducting sound playbacks in a carefully controlled manner at received levels up to 180 dB re 1 microPa and measuring animals' responses. The principal study species are beaked whales, especially Cuvier's beaked whale (*Ziphius cavirostris*), and large delphinids such as long–finned pilot whales (*Globicephala melas*). The location for the field work involving playback is near the Mediterranean Sea; the location for tagging to study risks of entanglement is mid–Atlantic states, especially near Cape Hatteras; and the location for studying pre–stranding behavior is Cape Cod Bay. Please refer to the tables in the application for a complete list of species and associated research activities by location.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the

application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 2, 2009.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–8004 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XO49**

### Caribbean Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council will hold public meetings to obtain input from fishers, the general public, and the local agencies representatives on the Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the United States Virgin Islands Concerning Bajo de Sico Seasonal Closure including a Regulatory Impact Review and an Environmental Assessment.

**DATES:** The meetings will be held on the following dates and locations:

•*April 22, 200*9, Frenchman's Reef and Morning Star Hotel, 5 Estate Bakkeroe, St. Thomas, USVI

•*April 23, 2009*, Buccaneer Hotel, Estate Shoys, Christtiansted, St. Croix, USVI

•*April 27, 200*9, Mayaguez Resort and Casino, Rd. 104, Km. 0.3, Mayaguez, Puerto Rico

All meetings will be held from 7 p.m. to 10 p.m.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Caribbean Fishery Management Council will hold public meetings to receive public input on the Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the United States Virgin Islands concerning Bajo de Sico seasonal closure including a Regulatory Impact Review and an Environmental Assessment. The purpose of this regulatory amendment is to protect the snapper and grouper spawning aggregations and the associated habitat from directed fishing pressure to achieve a more natural sex ratio, age and size structure, while minimizing adverse social and economic effects. Currently, the area is closed to all fishing activity from December 1 through the end of February, each year. In addition, fishing with pot, trap, bottom longlines, gillnets or trammel nets is prohibited year-round.

The proposed management alternatives are:

Action 1: Extend the closed season for Bajo de Sico (year-round gear restrictions already in place will not be affected)

Alternative 1: No actiondo not extend the seasonal closure of Bajo de Sico.

Alternative 2: (Preferred) Establish a 6 month closure of Bajo de Sico from October 1 to March 31 in order to provide better protection for spawning aggregations of large snappers and groupers as well as coral reef habitat.

Option a: prohibit fishing for all species, including Highly Migratory Species (HMS)

Option b: prohibit fishing for and possession of all species, including HMS

Option c: prohibit fishing for Council managed species

Option d: (Preferred) prohibit fishing for and possession of Council managed species

Alternative 3: Establish a 6 month closure of Bajo de Sico from December 1 to May 31 in order to provide better protection for spawning aggregations of large snappers and groupers as well as coral reef habitat.

Option a: prohibit fishing for all species, including HMS

Option b: prohibit fishing for and possession of all species, including HMS

Option c: prohibit fishing for Council managed species

Option d: prohibit fishing for and possession of Council managed species

Alternative 4: Extend closure of Bajo de Sico to 12 months in order to provide full protection for spawning aggregations of large snappers and groupers as well as coral reef habitat.

Option a: prohibit fishing for all species, including HMS

Option b: prohibit fishing for and possession of all species, including HMS

Option c: prohibit fishing for Council managed species

Option d: prohibit fishing for and possession of Council managed species

Action 2: Prohibit anchoring by fishing vessels

Alternative 1: No action—do not prohibit anchoring by fishing vessels

Alternative 2: Prohibit anchoring for six (6 months). The six (6)-month closure will coincide with the closure period chosen in action 1.

Alternative 3: (Preferred) Prohibit anchoring year round.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: April 3, 2009.

**Tracey L. Thompson,**

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

[FR Doc. E9–8006 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Intent To Conduct Restoration Planning To Evaluate Potential Injuries to Natural Resources and Services Resulting From the Discharge of Oil From the Tank Barge (T/B) DBL 152 in the Gulf of Mexico

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Intent to Conduct Restoration Planning to evaluate potential injuries to natural resources and services resulting from the discharge of oil from the Tank Barge (T/B) DBL 152 in the Gulf of Mexico. NOAA also seeks public involvement in

the restoration planning for this oil spill.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) has determined that the impacts of the November 11, 2005, discharge of slurry oil from the Tank Barge (T/B) DBL 152, over which NOAA has jurisdiction as a natural resource trustee, warrant performing a natural resource damage assessment. NOAA is hereby providing notice of its intent to conduct restoration planning to evaluate potential injuries to natural resources and services resulting from this incident and to use that information to determine the need for and the scale of restoration actions to address these potential injuries.

NOAA seeks public involvement in the restoration planning for this spill. Opportunities for public involvement are provided through public review and comment on documents contained in the Administrative Record, as well as on the Draft and Final Restoration Plans when they have been prepared.

*Public Involvement and Further Information:* Pursuant to 15 CFR 990.44(c), NOAA seeks public involvement in restoration planning for this incident, through public review of and comments on the documents contained in the administrative record. Comments should be sent to: Troy Baker, NOAA Assessment and Restoration Division, LSU/Sea Grant Building, Room 124B, Baton Rouge, Louisiana 70803, 225–578–7921 (ph), 225–578–7926 (fax), *Troy.Baker@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Oil Spill and Response Activities

On November 11, 2005, while en route from Houston, Texas, to Tampa, Florida, the T/B DBL 152, owned and operated by K-Sea Transportation Partners, L.P. and K-Sea Operating Partnership, L.P. (collectively ''K-Sea'') allided with the unmarked, submerged remains of a pipeline service platform that collapsed in the western Gulf of Mexico during Hurricane Rita. The double-hulled barge was carrying approximately 119,793 barrels (5,031,317 gallons) of a blended mixture of heavier-than-water slurry oil. An estimated 45,846 barrels of oil (1,925,532 gallons) were discharged into federal waters of the Gulf of Mexico as a result of the allision (the Incident). Of this volume, an estimated 2,355 bbls (98,910 gallons) were recovered by divers. In total, 43,491 bbls (1,826,622 gallons) of unrecovered oil was left remaining in the environment. The discharge occurred in federal waters approximately 35 nautical miles south-southeast of Sabine Pass, Texas and Calcasieu Pass, Louisiana.

Operations to locate, assess and recover the submerged oil were initiated shortly after the Incident occurred. Full-scale submerged oil recovery efforts using diver-directed pumping were initiated by early December 2005. Submerged oil cleanup activities were continued until January 12, 2006, at which time recovery operations were suspended by the Unified Command. Long-term monitoring of non-recovered submerged oil was initiated in January 2006 and continued for a period of approximately one year. Based on the results of long-term monitoring and on-going feasibility constraints, no additional submerged oil recovery was performed after January 2006. As of July 2006, residual submerged oil had been found as far as 13 nautical miles from the accident site.

The owner/operator of the vessel is a ''Responsible Party'' for this incident as defined by the Oil Pollution Act (OPA), 33 U.S.C. Section 2701 *et seq.* To date, the Responsible Party has cooperated with NOAA in the performance and/or funding of response, cleanup, and preassessment data collection activities. By letter dated May 10, 2007, the Responsible Party has committed to participate in a cooperative natural resource damage assessment. NOAA is the sole natural resource trustee for the DBL 152 Incident, as designated pursuant to 33 U.S.C. Section 2706(b), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605. NOAA's trust resources include, but are not limited to, commercial and recreational fish species, anadramous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

Immediately following the spill, NOAA and the Responsible Party initiated a number of cooperative preassessment data collection activities, pursuant to OPA, to gather information to aid in an initial determination as to whether natural resources or services have been injured or are likely to be injured by the discharge. Specific preassessment activities included the collection and analysis of neat and weathered oil samples, benthic fauna and demersal fishes, and samples of sediments and water taken in the oiled areas. NOAA's Preassessment Data Report details these preassessment data collection efforts, and provides summaries of laboratory results and supporting information. This Preassessment Data Report is available for review at: *http://www.darrp.noaa.gov/southeast/dbl152/index.html*.

## NOAA's Determination of Jurisdiction

NOAA made the following determinations required by 15 CFR 990.41(a):

(1) NOAA has jurisdiction to pursue restoration pursuant to OPA, 33 U.S.C. 2702 and 2706(c); 40 CFR part 300, the OPA Natural Resource Damage Assessments Final Rule, 15 CFR part 990, and 61 FR 440 (January 6, 1996).

(2) The discharge of slurry oil into the Gulf of Mexico on November 11, 2005, was an incident, as defined in 15 CFR 990.30.

(3) The discharge was not permitted under State, Federal, or local law; the discharge was not from a public vessel; and the discharge was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

(4) Natural resources under the trusteeship of NOAA may have been injured as a result of the incident. The slurry oil discharged contains components that may be harmful to aquatic organisms, birds, wildlife, and vegetation. Specifically, benthic and demersal invertebrate and vertebrate fauna were likely exposed to the oil from this discharge, and injury to those resources, as well as lost ecological services, may have resulted from the Incident.

Based on the above findings, NOAA made the determination that it has jurisdiction to pursue restoration pursuant to OPA, 33 U.S.C. Sections 2702 and 2706(b)–(c).

## Determination To Conduct Restoration Activities

For the reasons discussed below, NOAA has made the determinations required by 15 CFR 990.42(a) and is providing notice pursuant to 15 CFR 990.44 that it intends to conduct restoration planning in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of the Incident.

(1) Injuries have likely resulted from the Incident, though the extent of such injuries has not been fully determined at this time. NOAA bases this determination upon data presented in the Preassessment Data Report, which were collected and analyzed pursuant to 15 CFR 990.43. These data demonstrate the likelihood that natural resources and services have been injured from this incident including, but not limited to, benthic and demersal vertebrates and

invertebrates, which live on or near the ocean floor where the oil settled. The nature and extent of injuries will be determined during the damage assessment.

(2) Response actions during cleanup have not fully addressed the injuries resulting from the Incident. Although response actions were initiated promptly, the nature and location of the discharge prevented recovery of all of the oil and precluded prevention of injuries to some natural resources. It is anticipated that injured natural resources will eventually return to baseline levels, but there is the potential for interim losses to have occurred and to continue to occur until a return to baseline is achieved.

(3) Feasible compensatory restoration actions exist to address injuries from this incident. Restoration actions that could be considered may include, but are not limited to: creation or enhancement of offshore artificial reef structures; creation, restoration, enhancement or protection of marsh habitat; and marine debris removal. In addition, methods such as Habitat Equivalency Analysis exist to scale the amount of compensatory restoration required to offset ecological service losses resulting from this incident.

**Administrative Record**

NOAA has opened an Administrative Record (Record) in compliance with 15 CFR 990.45. The Record will include documents relied on by NOAA during the pre-assessment performed in conjunction with the Incident. To date the Record contains:

(1) A copy of this notice;

(2) A letter from NOAA to the Responsible Party inviting their participation in a cooperative natural resource damage assessment;

(3) A letter from the Responsible Party to NOAA accepting the invitation to participate in a cooperative natural resource damage assessment and enclosing the ''Guiding Principles for NOAA/K-Sea DBL 152 Cooperative Natural Resource Damage Assessment'' that were developed and coordinated by NOAA and K-Sea to guide the cooperative NRDA for the Incident; and

(4) The Preassessment Data Report prepared in conjunction with the preassessment activities arising from the Incident.

The Record is on file at: NOAA Assessment & Restoration Division, ATTN: Troy Baker, Louisiana State University, Sea Grant Building, Room 124B, Baton Rouge, LA 70803, 225–578–7921 (ph), 225–578–7926 (fax), *TroyBaker@noaa.gov*.

Dated: March 31, 2009.

**David G. Westerholm,**

*Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E9–7850 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**Docket No. 090402625–9626–01**

### Public Telecommunications Facilities Program: Notice of Availability of Funds

**AGENCY:** National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

**ACTION:** Notice of Availability of Funds; Catalog of Federal Domestic Assistance.

**SUMMARY:** On October 20, 2008, the National Telecommunications and Information Administration (NTIA) announced the closing date for receipt of applications for the Public Telecommunications Facilities Program (PTFP). NTIA now announces that $18 million has been appropriated for fiscal year 2009 grants.

**DATES:** Funds will be available for applications submitted by the originally announced deadline of December 18, 2008, as well as applications for certain digital television Distributed Transmission System (DTS) projects and replacement translator projects that must be received prior to 5 p.m. Eastern Daylight Time (Closing Time), Monday, May 18, 2009.

**ADDRESSES:** To obtain a printed application package, submit completed applications, or send any other correspondence, write to PTFP at the following address: NTIA/PTFP, Room H–4812, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230. Application materials may be obtained electronically via the Internet at http://www.ntia.doc.gov/ptfp or http://www.grants.gov.

**FOR FURTHER INFORMATION CONTACT:** William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156; or wcooperman@ntia.doc.gov. Information about the PTFP also can be obtained electronically via the Internet at http://www.ntia.doc.gov/ptfp.

**SUPPLEMENTARY INFORMATION:** On October 20, 2008, NTIA published a Notice of Closing Date for Solicitation of Applications for the FY 2009 PTFP grant round. The Notice established Thursday, December 18, 2008 as the Closing Date.[1] The Notice indicated that ''[i]ssuance of grants is subject to the availability of FY 2009 funds. At this time, the Congress has passed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. Public Law No. 110–329 (2008), to fund operations of the PTFP through March 6, 2009. Further notice will be made in the **Federal Register** about the final status of funding for this program at the appropriate time.'' [2]

As a result of subsequent Federal Communications Commission actions authorizing new digital television services, NTIA extended the Closing Date to May 18, 2009, for Distributed Transmission System (DTS) projects and for replacement digital television translators.[3]

On March 11, 2009, the Omnibus Appropriations Act, 2009, was signed into law.[4] The Act appropriated $18 million for public telecommunications facilities planning and construction grants. These funds are now available to fund applications submitted in response to the **Federal Register** notices referenced above.

Dated: April 3, 2009.

**Dr. Bernadette McGuire-Rivera,**

*Associate Administrator, Office of Telecommunications and Information Applications.*

[FR Doc. E9–8003 Filed 4–7–09; 8:45 am]

**BILLING CODE 3510–60–S**

## COMMODITY FUTURES TRADING COMMISSION

### Establishment of Risk Management Advisory Committee

The Commodity Futures Trading Commission has determined to establish a new advisory committee, the Risk Management Advisory Committee. The purpose of the committee is to conduct public meetings and to make reports and recommendations to the Commission on risk management issues involving or relevant to participants in the markets regulated by the Commission. The reports and

[1] Public Telecommunications Facilities Program: Closing Date, 73 Fed. Reg. 62,258 (Oct. 20, 2008) (PTFP Closing Date Notice).

[2] 73 Fed. Reg. at 62,258.

[3] Public Telecommunications Facilities Program: Notice of Amended Closing Date for Solicitation of Applications, 73 Fed. Reg. 74,709 (Dec. 9, 2008). Public Telecommunications Facilities Program; Notice of Amended Solicitation of Applications, 74 Fed. Reg. 5643 (Jan. 30, 2009).

[4] *See* Pub. L. No. 111–8.

recommendations of the Risk Management Advisory Committee will be used by the Commission in evaluating regulatory and legislative issues falling within the Commission's statutory responsibilities. The committee also will serve as a vehicle for informed discussion of emerging issues relating to risk management and for communication regarding such issues among the Commission, market participants, regulators, and other relevant persons.

The Risk Management Advisory Committee will have no operational responsibilities. The Commission will seek to achieve a balanced membership by appointing representatives of a cross section of the groups and interests involved in or affected by the Commission's actions relating to risk management.

The Commission has determined that establishment of the Risk Management Advisory Committee is in the public interest and is necessary to enable the Commission to carry out its responsibilities in the most effective and responsive manner. Risk management is both a central purpose of the markets regulated by the Commission and a necessary component of their effective functioning. Recent economic developments have demonstrated the critical importance of risk management and the need for clearinghouses, firms and other market participants to thoroughly and systematically assess their risk management practices. Recent developments have similarly reemphasized the need for the Commission to effectively and efficiently assess industry risk controls, determine their ongoing effectiveness, and tailor oversight of regulated entities based upon accurate risk assessments. In these circumstances, an advisory committee focused on risk management will significantly advance the Commission's ability to carry out its mission.

The charter of the Risk Management Advisory Committee will become effective upon its filing pursuant to 5 U.S.C. App. 2 section 9(c). The Commission expects to file the charter promptly upon completion of the 15 day notice period specified by 41 CFR 102–3.65(b).

Interested persons may obtain information by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 2, 2009, by the Commission.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. E9–7939 Filed 4–7–09; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Threat Reduction Advisory Committee

**AGENCY:** Defense Threat Reduction Agency, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, Department of Defense.

**ACTION:** Notice of federal advisory committee meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (hereafter referred to as the Committee).

**DATES:** Thursday, April 30, 2009 (8 a.m. to 4 p.m.) and Friday, May 1, 2009 (10 a.m. to 11:30 a.m.)

**ADDRESSES:** Defense Threat Reduction Agency, Defense Threat Reduction Center Building, Conference Room G, Room 1252, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060–6201, and the USD (AT&L) Conference Room (3A912A), the Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201; Phone: (703) 767–4759; Fax: (703) 767–5701; e-mail: *eric.wright@dtra.mil.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To obtain, review and evaluate information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (WMD), chemical and biological defense, transformation of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

*Meeting Agenda:* The Committee will receive summaries of current activities related to combating WMD as well as nuclear deterrent transformation activities from the USD AT&L, ATSD(NCB) and Director of DTRA. Panel summaries from six ad-hoc working Panels (Chemical-Biological Warfare Defense, Systems and Technology, Combating Weapons of Mass Destruction, Nuclear Deterrent Transformation, Implementation and Intelligence) will be provided for committee discussion.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the Office of the DoD General Counsel, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in § 552b(c)(1) of title 5, United States Code.

*Written Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: April 2, 2009.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–7916 Filed 4–7–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Availability for the Record of Decision (ROD) for Implementation of Fort Carson Grow the Army (GTA) Stationing Decisions

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Availability (NOA).

**SUMMARY:** The Executive Director of the Army's Installation Management Command has reviewed the Final Environmental Impact Statement (EElS)

for Implementation of Fort Carson Grow the Army Stationing Decisions and has made the decision to proceed with all facets of the Proposed Action, with the exception that the Army has decided not to station a Combat Aviation Brigade (CAB) at Fort Carson at this time. Implementation of the Proposed Action involves the stationing of approximately 3,900 additional Soldiers at Fort Carson, the construction of new Infantry Brigade Combat Team (IBCT) facilities at the Operational Readiness Training Center site, demolition of old facilities and construction of new facilities in Fort Carson's cantonment area, and additional training at Fort Carson and the Pinon Canyon Maneuver Site (PCMS). This alternative is summarized in the Army's ROD and described fully in Chapter 2 of the FEIS.

**ADDRESSES:** For specific questions, please contact: Fort Carson National Environmental Policy Act Coordinator, 1638 Elwell Street, Bldg 6236, Fort Carson, CO 80913–4000 or e-mail *CARSDECAMNEPAconus.army.mil*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dee McNutt, Fort Carson Public Affairs Office at (719) 526–1269, during normal business hours.

**SUPPLEMENTARY INFORMATION:** The EElS assessed the potential environmental consequences of three alternatives for implementing GTA at Fort Carson and PCMS. All alternatives included constructing new facilities at Fort Carson to support an IBCT and other combat support units, the potential stationing of a CAB, upgrading ranges at Fort Carson, and increased use of live fire training ranges and maneuver areas at Fort Carson and PCMS. The Proposed Action and alternatives do not include the expansion of PCMS or any construction at PCMS. The ROD incorporates analyses contained in the FEIS, including comments provided during formal comment and review periods. The ROD evaluates the ability of each alternative to meet the Purpose and Need for the Proposed Action and outlines mitigation commitments. The Proposed Action was selected as it is best able to meet the Army's needs while sustaining the environment. A fuller rationale for the decision can be found in the ROD which is available for public review at *http://www.aec.army.mil*.

Dated: March 27, 2009.

**Addison D. Davis, IV,**

*Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health.*

[FR Doc. E9–7506 Filed 4–7–09; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education; Overview Information; Child Care Access Means Parents in School (CCAMPIS) Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.335A.

*Dates:*

Applications Available: April 8, 2009.

Deadline for Transmittal of Applications: May 8, 2009.

Deadline for Intergovernmental Review: July 7, 2009.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The CCAMPIS Program supports the participation of low-income parents in postsecondary education through the provision of campus-based child care services.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 419N(d) of the Higher Education Act of 1965, as amended and reauthorized by the Higher Education Opportunity Act of 2008 (HEA) (20 U.S.C. 1070e(d)).

*Competitive Preference Priority:* For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Priority is given to institutions of higher education that submit applications describing child care programs that: (1) Leverage significant local or institutional resources, including in-kind contributions, to support the activities assisted under section 419N of the HEA; and (2) Utilize a sliding fee scale for child care services provided under this program in order to support a high number of low-income parents pursuing postsecondary education at the institution.

*Program Authority:* 20 U.S.C. 1070e.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98 and 99.

**Note:** Because there are no program specific regulations for the CCAMPIS Program, applicants are encouraged to carefully read the authorizing statute for this program.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $10,714,000.

*Estimated Range of Awards:* $10,000–$300,000.

*Estimated Average Size of Awards:* $90,333.

*Maximum Award:* In accordance with section 419N(b)(2)(A) of the HEA, the maximum amount an applicant may receive under this program is one percent of the applicant's total amount of all Federal Pell Grant funds awarded to students enrolled at the institution for FY 2008. A grant shall not be less than $10,000 for a single budget period of 12 months (see section 419N(b)(2)(B) of the HEA).

*Estimated Number of Awards:* 119.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

**III. Eligibility Information**

1. *Eligible Applicants:* Any institution of higher education that during FY 2008 awarded a total of $350,000 or more of Federal Pell Grant funds to students enrolled at the institution. An institution that currently has a CCAMPIS Program grant with a project period ending in 2009 and 2010 is eligible to apply in accordance with section III. 3 of this notice.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* At this time, we do not anticipate conducting a competition for new awards in FY 2010. Institutions that currently have a CCAMPIS Program grant with a project period ending in 2010 should apply for a new grant during this FY 2009 competition.

Subject to the availability of funds, we plan to make new awards in FY 2010 by funding in rank order those applicants with project periods ending in 2010 who scored within the funding range under the FY 2009 competition; and by funding in rank order any other high-quality applications that remain on the slate, including applicants with project periods ending in 2010. Those applicants with project periods ending in 2010 may be awarded a new grant to begin in FY 2010 if: (1) The FY 2009 application scores in the funding range for new awards, and (2) the applicant met all the terms and conditions of the previous grant, including the submission of all required reports.

**IV. Application and Submission Information**

1. *Address to Request Application Package:* J. Alexander Hamilton;

Antoinette Clark-Edwards; or Dorothy Marshall, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7583; (202) 502–7656; or (202) 502–7734 (respectively) or by e-mail: *TRIO@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting one of the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: Part III, the program narrative is where you, the applicant, address the competitive priority and selection criteria that reviewers use to evaluate your application. You must limit Part III, Program Narrative, to no more than 45 pages using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margin.

• Double space (no more than three lines per vertical inch) all text in the Program Narrative (Part III), including titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, Budget Information Non-Construction Program (ED Form 524); Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of Part III, the Program Narrative section, including the narrative budget justification.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 8, 2009.

Deadline for Transmittal of Applications: May 8, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 7, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify funding restrictions as outlined in the HEA. We reference additional regulations outlining restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CCAMPIS Program, CFDA number 84.335A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the CCAMPIS Program at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.335, not 84.335A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Eileen S. Bland, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.335A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.335A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from section 419N(c) of the HEA and 34 CFR 75.210 as follows:

The maximum score for the total of these criteria (selection criteria A through E) is 100 points. The maximum score for each criterion is indicated in parentheses, and the maximum score for each factor is in the application package for this competition.

A. *Need for the Project.* (Maximum 35 Points)

In determining the need for the proposed project, the Secretary considers the extent to which the applicant demonstrates, in its application, the need for campus-based child services for low-income students at the institution by including the following:

1. Information regarding student demographics.

2. An assessment of child care capacity on or near campus.

3. Information regarding the existence of waiting lists for existing child care.

4. Information regarding additional needs created by concentrations of poverty or by geographic isolation.

5. Other relevant data (see 419N(c)(3) of the HEA).

B. *Quality of project design.* (Maximum 25 Points)

In determining the quality of the design of the proposed project, the Secretary considers the following:

1. The extent to which the applicant describes in its application the activities to be assisted and whether the grant funds will support an existing child care program or a new child care program (see section 419N(c)(4) of the HEA).

2. The extent to which the services to be provided by the proposed project are focused on those with the greatest needs (see 34 CFR 75.210(d)(3)(xi)).

3. The likely impact of the services to be provided by the proposed project on the intended recipients of those services (see 34 CFR 75.210(d)(3)(iv)).

4. The extent to which the application includes an assurance that the institution will meet the child care needs of low-income students through the provision of services, or through a contract for the provision of services (see section 419N(c)(6) of the HEA).

5. The extent to which the child care program will coordinate with the institution's early childhood education curriculum, to the extent the curriculum is available, to meet the needs of the students in the early childhood education program at the institution, and the needs of the parents and children participating in the child care program assisted under this section (see section 419N(c)(7) of the HEA).

6. The extent to which the proposed project encourages parental involvement (see 34 CFR 75.210(c)(2)(xix)).

7. If the institution is requesting grant assistance for a new child care program:

a. The extent to which the applicant provides in its application a timeline, covering the period from receipt of the grant through the provision of the child care services, delineating the specific steps the institution will take to achieve the goal of providing low-income students with child care services (see section 419N(c)(8)(A) of the HEA).

b. The extent to which the applicant specifies in its application the measures the institution will take to assist low-income students with child care during the period before the institution provides child care services (see section 419N(c)(8)(B) of the HEA).

c. The extent to which the application includes a plan for identifying resources needed for the child care services, including space in which to provide child care services and technical assistance if necessary (see section 419N(c)(8)(C) of the HEA).

C. *Quality of management plan.* (Maximum 20 Points)

In determining the quality of the management plan for the proposed project, the Secretary considers the following:

1. The extent to which the application includes a management plan that describes the resources, including technical expertise and financial support, the institution will draw upon to support the child care program and the participation of low-income students in the program, such as accessing social services funding, using student activity fees to help pay the costs of child care, using resources obtained by meeting the needs of parents who are not low-income students, and accessing foundation, corporate or other institutional support, and demonstrates that the use of the resources will not result in increases in student tuition (see section 419N(c)(5) of the HEA).

2. The qualifications, including relevant training, experience, and time commitment of key project personnel (see 34 CFR 75.210(e)(3)(ii)).

3. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (see 34 CFR 75.210(g)(2)(i)).

4. The extent to which the management plan includes specific plans for the institution to comply with the reporting requirements in section 419N(e)(1) of the HEA.

D. *Quality of Project Evaluation.* (Maximum 15 Points)

In determining the quality of the project evaluation, the Secretary considers the following:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (see 34 CFR 75.210(h)(2)(i)).

2. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (see 34 CFR 75.210(h)(2)(iv)).

3. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes (see 34 CFR 75.210(h)(2)(vi)).

E. *Adequacy of resources.* (Maximum 5 points)

In determining the adequacy of resources for the proposed project, the Secretary considers the following:

1. The extent to which the budget is adequate to support the proposed project (see 34 CFR 75.210(f)(2)(iii)).

2. The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (see 34 CFR 75.210(f)(2)(v)).

2. *Review and Selection Process:* A panel of non-Federal readers will review each eligible application in accordance with the competitive preference priority and the selection criteria, pursuant to 34 CFR 75.217. Each reader will individually score each application by totaling the points (from the competitive preference priority and selection criteria) the reader assigned the application. An applicant's overall score will be determined by adding all reader scores for the applicant's application and then dividing the total points by the number of readers who reviewed the application. If there are insufficient funds for all applications with the same overall scores, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the CCAMPIS Program.

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The success of the CCAMPIS Program will be measured by the postsecondary persistence and degree of completion rates of CCAMPIS Program participants who remain at the grantee institution. All CCAMPIS Program grantees will be required to submit an annual performance report documenting the persistence and degree attainment of their participants. Because students may take different lengths of time to complete their degrees, multiple years of performance report data are needed to determine the degree completion rates of CCAMPIS Program participants.

**VII. Agency Contacts**

*For Further Information Contact:* J. Alexander Hamilton, if unavailable, contact Antoinette Clark-Edwards or Dorothy Marshall, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7583; (202) 502–7656; or (202) 502–7734, respectively, or by e-mail: *TRIO@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

**VIII. Other Information**

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to one of the program contact persons listed under *For Further Information Contact* in section VII of this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

*Delegation of Authority:* The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: April 3, 2009.

**Daniel T. Madzelan,**

*Director, Forecasting and Policy Analysis.*

[FR Doc. E9–7992 Filed 4–7–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Striving Readers

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.371A.

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of proposed priorities, requirements, definitions, and selection criteria.

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, definitions, and selection criteria for the Striving Readers program grant competition. The Assistant Secretary may use these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2009 and later years. The Assistant Secretary intends to use the priorities, requirements, definitions, and selection criteria to provide Federal financial assistance to support the implementation and evaluation of intensive, supplemental literacy interventions for struggling readers.

**DATES:** We must receive your comments on or before May 8, 2009.

**ADDRESSES:** Address all comments about this notice to Marcia J. Kingman, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E106, Washington, DC 20202–6400.

If you prefer to send your comments by e-mail, use the following address: *Marcia.Kingman@ed.gov*. You must include the term ''Striving Readers—Comments on FY 2009 Proposed Priorities'' in the subject line of your electronic message.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**FOR FURTHER INFORMATION CONTACT:** Marcia J. Kingman. Telephone: (202) 401–0003 or by e-mail: *Marcia.Kingman@ed.gov*.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the

notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion your comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definitions, and selection criteria in room 3E106, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The purpose of this program is to raise the reading levels of adolescent students in ESEA Title I-eligible schools with significant numbers of students reading below grade level and to build a strong, scientific research base for identifying and replicating strategies that improve adolescent literacy instruction. The program supports expanding existing adolescent literacy initiatives or creating new initiatives that provide intensive, supplemental literacy interventions for struggling readers.

*Program Authority:* 20 U.S.C. 6492.

*Applicable Program Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99, as applicable.

*Proposed Priorities:* This notice contains two proposed priorities.

*Proposed Priority 1—Supplemental Literacy Intervention for Struggling Readers in the Middle Grades:*

*Background:*

One of the greatest obstacles to achieving President Obama's ambitious goal of regaining our Nation's global leadership in educational attainment is the inadequate literacy skills that too many young people bring with them as they enter high school. Without strong literacy skills, high school students cannot master the rigorous academic content they need to prepare for postsecondary education, careers, and active participation in our democracy. Students in the middle grades and in high school who have low-level reading skills also are at greater risk of dropping out of school.

The Striving Readers program awards competitive grants to support the implementation and rigorous evaluation of promising adolescent literacy interventions intended to increase our understanding of how we can improve the literacy skills of adolescents most effectively. The Department awarded more than $24 million for the first eight grants under the program in March, 2006 and has supported continuation of those grants with an additional $88.6 million in subsequent years. These projects are now entering their third year and are serving more than 45,000 secondary school students annually, including 7,300 adolescents who read two or more years below grade level. The Department released year-one implementation studies last year, and expects to release impact evaluations of the first two years of project implementation this summer.

*Focus on Supplemental Literacy Intervention for Struggling Readers:*

Each of the Striving Readers projects funded in FY 2006 supports both an intensive supplemental literacy intervention for struggling readers (students who read two or more years below grade level) and a schoolwide literacy initiative that includes literacy instruction in all content-area classes and is intended to improve the literacy skills of all students. In Proposed Priority 1, we are proposing to support projects that focus exclusively on the implementation of a supplemental literacy intervention for struggling readers. While teaching literacy in every content-area class is necessary if all students are to acquire high-level literacy skills—the complex set of skills that enables one to read critically, comprehend, reason, and write persuasively—students with reading difficulties need support in addition to the support they receive in content-area classes. Struggling readers, through intense interventions that occur in a supplemental class, must have a real opportunity to catch up with their peers, graduate from high school, and secure a place in college and the workplace after graduation. Given limited available resources for this program, we believe that the primary focus of this priority should be the urgent needs of these adolescents.

Under Proposed Priority 1, we also are proposing that projects address the needs of struggling readers by implementing a school-year-long literacy intervention that supplements the regular English language arts instruction students receive and that delivers instruction exclusively or principally during the school day. Research indicates that an intensive, supplemental intervention of this kind is more likely to accelerate the development of grade-level literacy skills by struggling readers than are other strategies or approaches. *Improving Adolescent Literacy: Effective Classroom and Intervention Practices*, a practice guide published in 2008 by the Institute of Education Sciences' What Works Clearinghouse, found strong research evidence that students who have only partial mastery of the prerequisite knowledge and skills that are fundamental for reading at grade level need more intensive help than can be provided by teachers during English language arts or other classes (Institute of Education Sciences, 2008).

Proposed Priority 1 would also require that this supplemental literacy intervention be research-based and include, at a minimum, a number of practices that many researchers in the field of adolescent literacy agree are critical to the effectiveness of a supplemental literacy intervention for struggling readers. These practices include the use of a reliable screening assessment to identify students with reading difficulties, a reliable diagnostic reading assessment to pinpoint students' instructional needs, explicit vocabulary instruction, direct and explicit comprehension strategy instruction, and content intended to improve student motivation and engagement in literacy learning (Institute of Education Sciences, 2008; Boardman, Roberts, Vaughn *et al.*, 2008; Biancarosa and Snow, 2006).

To meet Proposed Priority 1, the supplemental literacy intervention also must have been implemented in at least one school in the United States within the past five years. The purpose of this requirement is to ensure that the limited funds available for new awards are used to support interventions that are fully developed and that can be implemented by the schools included in the project without significant modification. While there is a need for greater investment in the development of new literacy interventions, at this time, the Department seeks to focus on replicating

successful supplemental literary interventions in multiple schools.

*Focus on Students in the Middle Grades:*

Proposed Priority 1 would also focus on projects that serve struggling readers in any of grades 6 through 8 because research indicates that early and intense intervention in the middle grades is critical to putting students with below-grade-level literacy skills on a path to graduation when they enter high school (Balfanz, Herzog, and Mac Iver, 2007).

The number of adolescents in the middle grades who need assistance with reading is alarming. Twenty-seven percent of eighth-grade students in the United States scored below basic in reading on the most recent National Assessment of Educational Progress (NAEP). Forty-two percent of eighth-grade students eligible for free- or reduced-price lunch scored below basic (National Center for Education Statistics, 2007). According to one estimate, approximately half of the students who enter a typical high-poverty, urban high school read at a sixth- or seventh-grade level (Balfanz *et al.*, 2002).

When students enter high school with reading skills that are significantly below grade level, they are at great risk of dropping out, particularly during the ninth-grade year. One analysis of the school experiences and outcomes of students who were members of the Class of 2000 in Philadelphia found that more than three-quarters of the students who dropped out in ninth grade entered high school with reading skills that were one or more years below grade level. Fifty-eight percent of these ninth-grade dropouts entered the ninth grade with reading skills that were three or more years below grade level (Neild and Balfanz, 2006). Similarly, an analysis of longitudinal student data for three large California districts found that more than sixty percent of students who scored ''far below basic'' on an eighth-grade reading assessment dropped out before graduation (Kurlaender, Reardon, and Jackson, 2008).

*Proposed Priority 1—Supplemental Literacy Intervention for Struggling Readers in the Middle Grades:*

To be eligible for consideration under this priority, an applicant must propose to implement a supplemental literacy intervention during the second, third, and fourth years of the project period that—

(a) Will be provided to struggling readers (as defined elsewhere in this notice) in any of grades 6 through 8 in no fewer than 5 eligible schools;

(b) Supplements the regular English language arts instruction students receive;

(c) Provides instruction exclusively or primarily during the regular school day, but that may be augmented by after-school instruction;

(d) Is at least one full school year in duration;

(e) Includes the use of a nationally normed, reliable, and valid screening reading assessment (as defined elsewhere in this notice) to identify struggling readers;

(f) Includes the use of a nationally normed, reliable, and valid diagnostic reading assessment (as defined elsewhere in this notice) to pinpoint students' instructional needs;

(g) Uses a research-based literacy model that is flexible enough to meet the varied needs of struggling readers, is intense enough to accelerate the development of literacy skills, and includes, at a minimum, the following practices:

(1) Explicit vocabulary instruction.

(2) Direct and explicit comprehension strategy instruction.

(3) Opportunities for extended discussion of text meaning and interpretation.

(4) Instruction in reading foundational skills, such as decoding and fluency (for students who need to be taught these skills).

(5) Course content intended to improve student motivation and engagement in literacy learning.

(6) Instruction in writing; and

(h) Has been implemented in at least one school in the United States during the preceding five years.

*Proposed Priority 2—Rigorous and Independent Evaluation:*

*Background:*

Under section 1502(b) of the Elementary and Secondary Education Act of 1965 (ESEA), the Secretary is required to evaluate Striving Readers projects ''using rigorous methodological designs and techniques, including control groups and random assignment, to the extent feasible, to produce reliable evidence of effectiveness.'' Consequently, we are proposing a priority for applications that includes an evaluation plan that measures, through a randomized field trial, the effectiveness of the proposed supplemental literacy intervention in achieving desired outcomes.

The statutory evaluation requirement coincides with the needs of the adolescent literacy field for better information about what works. School systems across the country are beginning to develop comprehensive literacy programs that extend elementary literacy instruction into middle and high schools, but there is little empirical data to support some of these secondary-level programs. And, although the marketplace is producing a wealth of ''off-the-shelf'' interventions for students with reading deficiencies, most of these interventions have not been subjected to rigorous evaluations.

The critical need for a stronger research base on adolescent literacy necessitates that funded projects conduct careful, rigorous studies of the supplemental literacy interventions that will be implemented. Therefore, we have designed Proposed Priority 1 to be used in conjunction with Proposed Priority 2. Each project funded under Proposed Priority 1—Supplemental Literacy Intervention for Struggling Readers in the Middle Grades would be required to contract with an independent evaluator to conduct an experimental design evaluation and provide information and data for dissemination to the literacy community. The evaluation for each project must include at least 750 struggling readers, the minimum sample required to detect approximately 3–5 months of growth in reading achievement on standardized assessments for the typical student in grades 6 through 8. In addition, each project would be required to include at least 5 eligible schools. These schools may be part of a single local educational agency (LEA) or multiple LEAs. The Department plans to provide technical assistance to help grantees and their evaluation partners with evaluation design and implementation.

*Proposed Priority 2—Rigorous and Independent Evaluation:*

To be eligible for consideration under this priority, an applicant must propose to support a rigorous experimental evaluation of the effectiveness of the supplemental literacy intervention it implements under Priority 1 (Supplemental Literacy Intervention for Struggling Readers in the Middle Grades) during the second, third, and fourth years of the project that will—

(a) Be carried out by an independent evaluator whose role in the project is limited solely to conducting the evaluation;

(b) Use a random lottery to assign eligible struggling readers in each school in the project either to the supplemental literacy intervention or to other activities in which they would otherwise participate, such as a study hall, electives, or another activity that does not involve supplemental literacy instruction;

(c) Include rigorous and appropriate procedures to monitor the integrity of

the random assignment of students, minimize crossover and contamination between the treatment and control groups, and monitor, document, and, where possible, minimize student attrition from the sample;

(d) Measure outcomes of the supplemental literacy intervention using, at a minimum:

(1) The reading/language arts assessment used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA.

(2) A nationally normed, reliable, and valid outcome reading assessment (as defined elsewhere in this notice) that is closely aligned with the literacy skills targeted by the supplemental literacy intervention;

(e) Use rigorous statistical models to analyze the impact of the supplemental literacy intervention on student achievement, including the use of students' prior-year test scores as a covariate in the model to improve statistical precision and also including appropriate statistical techniques for taking into account the clustering of students within schools;

(f) Include an analysis of the fidelity of implementation of the critical features of the supplemental literacy intervention based on data collected by the evaluator;

(g) Include measures designed to ensure that the evaluator obtains high response rates to all data collections;

(h) Include no fewer than 750 struggling readers enrolled in no fewer than 5 schools in each year of the evaluation; and

(i) Be designed to detect not less than a 0.10 standard deviation impact of the supplemental literacy intervention on student achievement, which represents approximately 3 to 5 months' growth in reading achievement on standardized assessments for the typical student in grades 6 through 8.

*Types of Priorities:*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute Priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive Preference Priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational Priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

*Proposed Requirements:*

The Assistant Secretary for Elementary and Secondary Education proposes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

*Proposed Eligibility Requirement:*

*Background:*

Several State educational agencies have recently published comprehensive literacy plans that go beyond the traditional State focus on reading instruction in the early grades. These plans create policies and guidelines for extending literacy instruction into middle and high schools. In general, the new State plans acknowledge that improvements in adolescent literacy are the cornerstone for secondary-school reform and that those improvements must be accomplished through the teaching of literacy skills in all content-areas as well as through the provision of targeted, supplemental literacy interventions to struggling readers. To accomplish the mission embodied in those State plans, States are working with schools and districts to modify State literacy standards and assessments; to identify research-based literacy programs; to create cohorts of literacy coaches; to revise teacher preparation and training so that it includes education in content-based literacy strategies; to develop literacy professional development for in-service teachers; and to help improve the infrastructure of schools in order to better support literacy instruction.

Recent American Recovery and Reinvestment Act of 2009 (ARRA) funds appropriated for Title I School Improvement Grants and for the State Fiscal Stabilization Fund are available as financial support for executing many of the components of State comprehensive literacy plans as well as for creating comprehensive plans in States that are just beginning to address adolescent literacy needs. We are proposing that within the larger effort of building State-wide programs that will improve literacy for all adolescents, the limited funds available through the Striving Readers program be used by States to target services to struggling readers.

By proposing to limit eligibility to State educational agencies, we intend to partner with States, not only through the ARRA but also through these grants, to help States address the needs of struggling readers.

*Proposed Eligible Applicants:* To be considered for an award under this competition, an applicant must be a State educational agency (SEA) that applies on behalf of itself and one or more LEAs that have governing authority over the eligible schools (as defined elsewhere in this notice) that the applicant proposes to include in the project.

*Proposed Application Requirements:*

*Eligible Schools:*

*Background:*

We are proposing that the applicant SEA submit, for each eligible school it intends to include in the project, certain eligibility information to ensure that reviewers can adequately judge the extent of the school's willingness to participate fully in the evaluation and implementation of the supplemental literacy intervention. As a part of this application requirement, we also would require each applicant to submit, for each eligible school it intends to include in its project, State assessment data to verify that a large enough group of struggling readers exists among enrolled students to ensure an adequate sample size for the evaluation.

*Eligible schools:* To be considered for an award under this competition, an eligible applicant must include in its application the following with respect to each school it proposes to include in the project:

(a) The school's name, location, and enrollment disaggregated by grade level for the 2008–09 school year.

(b) State or other assessment data that demonstrate that, during each of the 2007–08 and 2008–09 school years, a minimum of 75 students enrolled in grades 6 through 8 in the school were struggling readers (as defined elsewhere in this notice).

(c) Evidence that the school is eligible to receive funds under part A of title I of the ESEA, pursuant to section 1113 of the ESEA.

(d) A letter from the superintendent of the LEA that has governing authority over the school and the principal of the school in which they—

(1) Agree to implement the proposed supplemental literacy intervention during the 2010–11, 2011–12, and 2012–13 school years, adhering strictly to the design of the intervention;

(2) Agree to allow eligible struggling readers to be randomly assigned (by lottery) to either the supplemental literacy intervention curriculum or to

other activities in which they would otherwise participate, such as a study hall, electives, or other activity that does not involve supplemental reading instruction; and

(3) Agree to participate in the evaluation, including in the evaluator's collection of data on student outcomes and program implementation.

*Proposed Logic Model and Assessment Requirements:*

*Background:*

We are proposing to require applicants to include, in their applications, a logic model of the supplemental literacy intervention that will allow reviewers to evaluate the merits of the intervention and the relation between the intervention and student outcomes. We are also proposing that applicants identify in their applications the nationally normed, reliable, and valid screening, diagnostic, and outcome reading assessments that they will use as they implement and evaluate the effects of the supplemental literacy intervention.

*Supplemental literacy intervention Logic Model and Assessment Requirements:* To be considered for an award under this competition, an applicant must include in its application the following evidence with respect to the supplemental literacy intervention it proposes to implement and evaluate:

(a) Evidence that the supplemental literacy intervention has been implemented in at least one school in the United States during the preceding five years.

(b) A one-page logic model that shows a clear, logical pathway leading from the project inputs and activities, through classroom instruction, to the expected impacts on students.

(c) The nationally normed, reliable, and valid screening, diagnostic, and outcome reading assessments (as these reading assessments are defined elsewhere in this notice) of student literacy skills that the applicant would use to inform the identification of struggling readers and the content of their instruction.

*Proposed Definitions:*

*Background:*

The Assistant Secretary for Elementary and Secondary Education proposes several definitions that will help clarify the population of students eligible for services under this competition and the tools to be used to identify those eligible students. We may apply one or more of these definitions in any year in which this program is in effect.

*Diagnostic reading assessment* means an assessment that is—

(a) Valid, reliable, and based on scientifically based reading research; and

(b) Used for the purpose of—

(1) Identifying a child's specific areas of strength and weakness;

(2) Determining any difficulties that a child may have in learning to read and the potential cause of such difficulties; and

(3) Helping to determine possible reading intervention strategies and related special needs.

*Eligible school* means a school that—

(a) Is eligible to receive funds under part A of title I of the ESEA, pursuant to section 1113 of the ESEA;

(b) Serves students in any of grades 6 through 8; and

(c) Enrolled not fewer than 75 students in any of grades 6 through 8 during the 2007–08 and 2008–09 school years whose reading skills were two or more years below grade level.

*Outcome reading assessment* means an assessment that is—

(a) Valid, reliable, and nationally normed;

(b) Closely aligned with the literacy skills targeted by the supplemental literacy intervention; and

(c) Used for the purpose of—

(1) Measuring student reading achievement; and

(2) Evaluating the effectiveness of the supplemental literacy intervention.

*Screening reading assessment* means an assessment that is—

(a) Valid, reliable, and based on scientifically based reading research; and

(b) A brief procedure designed as a first step in identifying children who may be at high risk for delayed development or academic failure and in need of further diagnosis of their need for special services or additional literacy instruction.

*Struggling readers* means readers who—

(a) Have only partial mastery of the prerequisite knowledge and skills that are fundamental for reading at grade level;

(b) Are reading two or more grades below grade level when measured on an initial screening reading assessment.

*Proposed Selection Criteria:*

*Background:*

The purposes of the Striving Readers grant program are to improve the literacy skills of adolescent struggling readers and to help build a strong, scientific, research base for specific strategies that improve adolescent literacy skills. To support those purposes, we are proposing the following selection criteria that we believe will allow us to fund the most promising supplemental literacy interventions for struggling readers and that will ensure that the evaluations of those interventions meet the research community's highest standard and provide reliable findings that inform adolescent literacy practice.

*Proposed Selection Criteria:*

The Assistant Secretary for Elementary and Secondary Education proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to each criterion.

(a) *Significance.*

(1) The potential contribution of the project to the development and advancement of theory, research, and practices in the field of adolescent literacy, including—

(i) In the case of a supplemental literacy intervention that has not been evaluated through a large-scale experimental evaluation, the extent to which other empirical evidence (such as smaller-scale experimental or quasi-experimental studies of the effects of the intervention on student achievement) demonstrates that the intervention is likely to be effective in improving the reading skills of struggling readers; or

(ii) In the case of a supplemental literacy intervention that has been evaluated by one or more large-scale experimental evaluations, the extent to which those evaluations provide evidence that demonstrates that the intervention is likely to be effective in improving the reading skills of struggling readers and that the proposed evaluation would increase substantially knowledge in the field of adolescent literacy, such as by studying the effectiveness of the intervention among a different population than studied in previous experimental evaluations or by using an improved evaluation design (such as one that has a marked increase in statistical power);

(2) The extent to which the proposed supplemental literacy intervention can be replicated in a variety of settings without significant modifications.

(b) *Project Design.*

(1) The extent to which the supplemental literacy intervention uses a research-based literacy model that is flexible enough to meet the varied needs of struggling readers, is intense enough to accelerate the development of literacy skills, and that includes, at a minimum, the following practices:

(i) Explicit vocabulary instruction;

(ii) Direct and explicit comprehension strategy instruction;

(iii) Opportunities for extended discussion of text meaning and interpretation;

(iv) Instruction in reading foundational skills, such as decoding and fluency (for students who need to be taught these skills);

(v) Course content designed to improve student motivation and engagement in literacy learning; and

(vi) Instruction in writing.

(2) The extent to which the professional development model proposed for the project has sufficient intensity (in terms of the number of hours or days).

(3) The extent to which the provider of the professional development identified in the application has the appropriate experience and knowledge to provide high-quality professional development.

(4) The extent to which the proposed project uses nationally normed, valid, and reliable screening reading assessments for screening struggling readers and for diagnosing individual student needs.

(c) *Project Evaluation.*

(1) The extent to which the evaluation plan includes data from the reading/English language arts assessment used by the State to measure adequate yearly progress under part A of title I of the ESEA and from a second, evaluator-administered, nationally normed, reliable, and valid measure of student reading achievement that is closely aligned with the goals of the intervention;

(2) The extent to which the evaluation plan describes an objective and appropriate method for the independent evaluator to conduct random assignment of students to treatment and control conditions; rigorous and appropriate methods for monitoring the integrity of random assignment and for minimizing crossover and contamination between the treatment and control groups; and rigorous and appropriate methods for monitoring, documenting, and, where possible, minimizing, student attrition from the sample;

(3) The extent to which the evaluation plan includes a clear, well-documented, and rigorous method for measuring the fidelity of implementation of the critical features of the intervention;

(4) The extent to which the evaluation plan describes rigorous statistical procedures for the analysis of the data that will be collected, including:

(i) A clear discussion of the relationship between hypotheses, measures, and independent and dependent variables.

(ii) Appropriate statistical techniques for taking into account the clustering of students within schools.

(iii) The use of data on students' achievement in prior years as a covariate to improve statistical precision.

(iv) In the case of qualitative data analyses, the use of appropriate and rigorous methods to index, summarize, and interpret data;

(5) The extent to which the independent evaluator identified in the application has experience in conducting scientifically based reading research and in designing and conducting experimental evaluations; and

(6) The extent to which the proposed budget allocates sufficient funds to carry out a high-quality evaluation of the proposed project.

*Final priorities, requirements, definitions, and selection criteria:*

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

*Executive Order 12866:* This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

*Delegation of Authority:* The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education, to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated: April 3, 2009.

**Joseph C. Conaty,**

*Director, Academic Improvement and Teacher Quality Programs.*

[FR Doc. E9–7995 Filed 4–7–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[Case No. CAC–019]**

## Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to Daikin AC (Americas), Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** This notice publishes the Department of Energy's Decision and Order in Case No. CAC–019, which grants a waiver to Daikin AC (Americas), Inc. (Daikin) from the existing Department of Energy (DOE) test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the Daikin variable speed and variable refrigerant volume (VRV–III) (commercial) multi-split heat pumps and heat recovery systems. As a condition of this waiver, Daikin must test and rate its VRV–III multi-split products according to the alternate test procedure set forth in this notice.

**DATES:** This Decision and Order is effective April 8, 2009, and will remain in effect until the effective date of a DOE final rule prescribing amended test procedures appropriate for the model series of Daikin VRV–III multi-split central air conditioners and heat pumps covered by this waiver.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *AS_Waiver_Requests@ee.doe.gov.*

Francine Pinto or Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE grants Daikin a Waiver from the existing DOE commercial package air conditioner and heat pump test procedures [1] for its VRV–III multi-split products, subject to a condition requiring Daikin to test and rate its VRV–III multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's decision requires that Daikin may not make any representations concerning the energy efficiency of these products unless such product has been tested in accordance with the DOE test procedure, consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representations fairly disclose the results of such testing.[2] (42 U.S.C. 6314(d))

Issued in Washington, DC, on March 30, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

### Decision and Order

*In the Matter of:* Daikin AC (Americas) Inc., (Daikin) (Case No. CAC–019).

*Background*

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A[3] of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the program in Part A, Part A–1[4] of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes large and small commercial air conditioning equipment, package boilers, storage water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. The statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. 42 U.S.C. 6311–6317. With respect to test procedures, the statute generally authorizes the Secretary to prescribe test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the Secretary must amend the test procedure for a covered commercial product if the applicable industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–2003 for small commercial package air-cooled air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for large commercial package air-cooled air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. Pursuant to this final rule, DOE's regulations at 10 CFR 431.95(b)(1)–(2) incorporate by reference the relevant ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Daikin's VRV–III VRF commercial multi-split products, which have capacities between 72,000 Btu/hr and 240,000 Btu/hr, fall in the range covered by ARI Standard 340/360–2004.

In addition, DOE's regulations contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment if that basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative

[1] The applicable test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (incorporated by reference at 10 CFR 431.95(b)(2)).

[2] Consistent with the statute, distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

[3] Part B of Title III of EPCA was redesignated Part A in the United States Code for editorial reasons.

[4] Part C of Title III of EPCA was redesignated Part A–1 in the United States Code for editorial reasons.

of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). The waiver provisions for commercial equipment are found at 10 CFR 431.401 and are substantively identical to those for covered consumer products. A waiver petition must include any alternate test procedures known to evaluate characteristics of the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). In general, a waiver terminates on the effective date of a final rule, published in the **Federal Register**, which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver from the applicable test procedure requirements. 10 CFR 431.401(a)(2). An Interim Waiver will terminate 180 days after issuance or upon the issuance of DOE's determination on the Petition for Waiver, whichever occurs first, which may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On August 31, 2007, Daikin filed a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to small and large commercial package air-cooled air-conditioning and heating equipment. The applicable test procedure is ARI 340/360–2004, because, as discussed above, this is the test procedure specified in Tables 1 and 2 to 10 CFR 431.96. On January 7, 2008, DOE published Daikin's Petition for Waiver in the **Federal Register** and granted the Application for Interim Waiver. 73 FR 1207.

In a similar and relevant case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for products very similar to Daikin's multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006, **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the MEUS Decision and Order in the **Federal Register** on April 9, 2007. 72 FR 17528 (April 9, 2007). Most of the comments responded favorably to DOE's proposed alternate test procedure. *Id.* at17529. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The MEUS Decision and Order included the alternate test procedure adopted by DOE. *Id*

DOE received no comments on the Daikin petition.

*Assertions and Determinations*

Daikin's Petition for Waiver

Daikin seeks a waiver from the DOE test procedures for this product class on the grounds that its VRV–III multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Daikin asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to MEUS, Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor unit to test. 69 FR 52661 (August 27, 2004) (MEUS); 72 FR 17528 (April 9, 2007) (MEUS); 72 FR 71383 (December 17, 2007) (Fujitsu); 72 FR 71387 (December 17, 2007) (Samsung).

Further, Daikin states that its VRV–III indoor units have nine different indoor static pressure ratings, and the test procedure does not provide for operation of indoor units at several different static pressure ratings during a single test. The indoor units are designed to operate at many different external static pressure values, which compounds the difficulty of testing. The number of connectable indoor units for each outdoor unit ranges up to 64. A testing facility could not manage proper airflow at several different external static pressure values to the many indoor units that would be connected to a VRV–III outdoor unit. Daikin further states that its VRV–III products' capability to perform simultaneous heating and cooling is not captured by the DOE test procedure. Notwithstanding this fact, DOE is required by EPCA to use the full-load descriptor Energy Efficiency Ratio (EER) for these products, and simultaneous heating and cooling does not occur when operating at full load.

Accordingly, Daikin requests that DOE grant a waiver from the applicable test procedures for its VRV–III product designs, until a suitable test procedure can be prescribed. DOE believes that the VRV–III Daikin equipment and equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. DOE is therefore granting to Daikin a VRV–III product waiver similar to the previous MEUS multi-split waivers.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the Daikin products at issue here, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004).

71 FR 14861.

Daikin did not include an alternate test procedure in its Petition for Waiver. However, in response to two recent Petitions for Waiver from MEUS, DOE specified an alternate test procedure to provide a basis from which MEUS could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the MEUS petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

To enable Daikin to make energy efficiency representations for its specified VRV–III multi-split products, DOE has decided to require use of the alternate test procedure described below, as a condition of Daikin's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the waiver for MEUS's R22 and R410A products, which was published at 72 FR 17528.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for MEUS's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

Therefore, as discussed below, as a condition for granting this Waiver to Daikin, DOE is including an alternate test procedure similar to those granted to MEUS for its R22 and R410A products. DOE is issuing today's Decision and Order granting Daikin a test procedure waiver for its commercial VRV–III multi-split heat pumps, but is requiring the use of the alternate test procedure described below as a condition of Daikin's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the MEUS waiver.

Alternate Test Procedure

The alternate test procedure developed in conjunction with the MEUS waiver has two basic components. First, it permits Daikin to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight [5] indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below.

Second, having an alternate DOE test procedure that can be applied to its products allows Daikin to represent the energy efficiency of that product. These representations must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or (2) if the first method is not available, then at the efficiency level of the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

As in the MEUS matter, DOE believes that allowing Daikin to make energy efficiency representations for non-tested combinations by adopting this alternative test procedure as described above is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure for commercial products tends to rate these products conservatively. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the current test procedure, which requires full-load testing. Full load testing, under which the entire building would require cooling, disadvantages these products because they are optimized for their highest efficiency when operating with less than full loads. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus and eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if the Department decided to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). Most of the comments received by DOE in response to the March 2006 notice favored the proposed alternate test procedure. 72 FR 17529. Commenters responding to that prior notice generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. Id.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of Daikin's VRV–III multi-split products according to the test procedure currently prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2). After careful consideration, DOE has decided to adopt the proposed alternate test procedure for Daikin's commercial water-source products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Daikin Petition for Waiver. The FTC staff did not have any objections to the issuance of a waiver to Daikin.

*Conclusion*

After careful consideration of all the materials submitted by Daikin, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' filed by Daikin AC (Americas), Inc., (Daikin) (Case No. CAC–019) is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV–III VRF multi-split air conditioner and heat pump models listed below on the basis of the currently applicable test procedure cited in 10 CFR 431.96, specifically, ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

**VRV–III Series Outdoor Units**

*460V/3-phase/60Hz Models*

• Heat Pump models RXYQ72PYDN, RXYQ96PYDN, RXYQ120PYDN,

[5] The ''tested combination'' was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.

RXYQ144PYDN, RXYQ168PYDN, RXYQ192PYDN, RXYQ216PYDN, RXYQ240PYDN with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000, respectively.

• Heat Recovery models REYQ72PYDN, REYQ96PYDN, REYQ120PYDN, REYQ144PYDN (2x REMQ72PYDN), REYQ168PYDN (1x REMQ96PYDN + 1x REMQ72PYDN), REYQ192PYDN (1x REMQ120PYDN + 1x REMQ72PYDN), REYQ216PYDN (1x REMQ120PYDN + 1x REMQ96PYDN), REYQ240PYDN (2x REMQ120PYDN) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

*208–230V/3-phase/60Hz Models*

• Heat Pump models RXYQ72PTJU, RXYQ96PTJU, RXYQ120PTJU, RXYQ144PTJU, RXYQ168PTJU, RXYQ192PTJU, RXYQ216PTJU, RXYQ240PTJU with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

• Heat Recovery models REYQ72PTJU, REYQ96PTJU, REYQ120PTJU, REYQ144PTJU, REYQ168PTJU (1x REMQ96PTJU + 1x REMQ72PTJU), REYQ192PTJU (1x REMQ120PTJU + 1x REMQ72PTJU), REYQ216PTJU (1x REMQ120PTJU + 1x REMQ96PTJU), REYQ240PTJU (2x REMQ120PTJU) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

**Compatible Indoor Units for Above-Listed Outdoor Units:**

• FXAQ Series all mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

• FXLQ Series floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

• FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

• FXDQ Series low static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

• FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000, 24,000, 30,000, 36,000, 48,000, 72,000 and 96,000 BTU/Hr.

• FXMQ Series high static ducted indoor units with nominally rated capacities of 18,000, 24,000, 30,000, 36,000 48,000, 72,000 and 96,000 BTU/Hr.

• FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 15,000 and 18,000 BTU/Hr.

• FXFQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000 and 36,000 BTU/Hr.

• FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 BTU/Hr.

• FXOQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000 and 48,000 BTU/Hr.

• FXMQ–MF Series concealed ducted indoor units with nominally rated capacities of 48,000, 72,000, and 96,000 BTU/Hr.

(3) *Alternate test procedure.*

(A) Daikin shall be required to test the products listed in paragraph (2) above according to the test procedure for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431 (ARI 340/360–2004, (incorporated by reference in 10 CFR 431.95(b)(2)), except that Daikin shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV–III products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and eight indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall:

(a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see b);

(b) Together, have a nominal cooling capacity that is between 95 percent and 105 percent of the nominal cooling capacity of the outdoor unit;

(c) Not, individually, have a nominal cooling capacity greater than 50 percent of the nominal cooling capacity of the outdoor unit;

(d) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(e) All be subject to the same minimum external static pressure requirement.

(C) *Representations.* In making representations about the energy efficiency of its VRV–III multi-split products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For VRV–III multi-split combinations tested in accordance with this alternate test procedure, Daikin may make representations based on these test results.

(ii) For VRV–III multi-split combinations that are not tested, Daikin may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date of issuance of this Order until the effective date of a DOE final rule prescribing amended test procedures appropriate to the model series manufactured by Daikin listed above.

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 30, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E9–7940 Filed 4–7–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[Case No. CD–003]**

## Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Whirlpool Corporation From the Department of Energy Clothes Dryer Test Procedures

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of Petition for Waiver, granting of application for Interim Waiver, and request for comments.

**SUMMARY:** This notice announces receipt of and publishes Whirlpool Corporation's (Whirlpool's) Petition for Waiver (hereafter, ''Petition'') from the Department of Energy (DOE) test procedure for determining the energy consumption of residential clothes dryers. The waiver request pertains to Whirlpool's specified single model line of condensing residential clothes dryers. The existing test procedure does not apply to condensing clothes dryers. In addition, today's notice grants Whirlpool an Interim Waiver from the DOE test procedures applicable to residential clothes dryers. DOE is soliciting comments, data, and information with respect to the Whirlpool Petition.

**DATES:** DOE will accept comments, data, and information with respect to Whirlpool's Petition until, but no later than May 8, 2009.

**ADDRESSES:** You may submit comments, identified by case number CD–003, by any of the following methods:

Follow the instructions for submitting comments.

- *E-mail: AS_Waiver_Requests@ee.doe.gov*. Include either the case number CD–003, and/or ''Whirlpool Clothes Dryer Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. CD–003, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Instructions:* All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Exchange (ASCII)) file format. Avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Pursuant to section 430.27(b)(1)(iv) of 10 CFR Part 430, any person submitting written comments must also send a copy of the comments to the petitioner. The contact information for the petitioner is: Mr. J. B. Hoyt, Director, Government Relations, Whirlpool Corporation, 2000 M 63, Mail Drop 3005, Benton Harbor, Michigan 49022.

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

*Docket:* For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room. Please note that the DOE's Freedom of Information Reading Room (formerly Room 1E–190 in the Forrestal Building) is no longer housing rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611; e-mail: *AS_Waiver_Requests@ee.doe.gov*; Francine Pinto or Michael Kido, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background and Authority
II. Petition for Waiver
III. Application for Interim Waiver
IV. Summary and Request for Comments

### I. Background and Authority

Title III of the Energy Policy and Conservation Act, as amended (''EPCA'') sets forth a variety of provisions concerning energy efficiency. Part A[1] of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the Petition for Waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). In general, waivers remain in effect until the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the

[1] This part was originally titled Part B but it was redesignated Part A in the United States Code for editorial reasons.

petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR Part 430.27(m).

The waiver process also allows the Assistant Secretary to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2)) An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additionally 180 days, if necessary. (10 CFR 430.27(h))

**II. Petition for Waiver**

On May 12, 2008, Whirlpool filed a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to its residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D. Whirlpool seeks a waiver from the applicable test procedures for its WCD7500VW basic product model because, Whirlpool asserts, design characteristics of this model prevent testing according to the currently prescribed test procedures. DOE previously granted Miele Appliance, Inc. (Miele), a waiver from test procedures for two similar condenser clothes dryer models (T1565CA and T1570C). (60 FR 9330 (Feb. 17, 1995)) Whirlpool claims that its condenser clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to Miele in 1995 be granted for Whirlpool's WCD7500VW model.

In support of its petition, Whirlpool claims that the current clothes dryer test procedures apply only to vented clothes dryers because the test procedures require the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. Whirlpool plans to market a condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums, neither of whose construction permits the use of external venting.

The Whirlpool Petition requests that DOE grant a waiver from existing test procedures to allow the sale of one model (WCD7500VW) without testing until DOE prescribes final test procedures and minimum energy conservation standards appropriate to condenser clothes dryers. Whirlpool did not include an alternate test procedure in its petition.

**III. Application for Interim Waiver**

The Whirlpool Petition also requests an Interim Waiver for immediate relief. An Interim Waiver may be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the Petition for Waiver. 10 CFR 430.27(g).

Whirlpool's Application for Interim Waiver does not provide sufficient information to permit DOE to evaluate the economic hardship Whirlpool might experience absent a favorable determination on its Application for Interim Waiver. Public policy would tend, however, to favor granting Whirlpool an Interim Waiver, pending determination of the Petition for Waiver. DOE previously granted Miele a waiver from the clothes dryer test procedure after determining that it was not applicable to the company's condenser clothes dryers because they lack an exhaust port for mounting the required exhaust restrictor, which is an element of the test procedure. In addition, DOE indicated that Miele's condenser dryers would not have to meet the applicable energy efficiency standards because their added utility justified their higher energy consumption compared to traditional clothes dryers, and because the test procedures were not applicable. See 60 FR 9332.

Subsequently, in 2008, DOE granted LG a similar waiver for its DLEC733W condenser clothes dryer, allowing sale without testing or meeting the energy conservation standards. (73 FR 66641 (Nov. 10, 2008)) DOE reasoned that LG's situation was analogous to Miele's and noted that although it would have been feasible to provide an alternate test method for LG to follow, doing so would carry the risk of driving a type of product with unique consumer utility from the market. 73 FR 66642.

Therefore, in light of the long-standing waiver granted to Miele, and the recent waiver to LG, DOE has decided to grant Whirlpool's application for Interim Waiver from testing of its condenser clothes dryers. This granting of Interim Waiver may be modified at any time upon a determination that the factual basis underlying the application is incorrect.

**V. Summary and Request for Comments**

Through today's notice, DOE announces receipt of Whirlpool's Petition for Waiver and grants Whirlpool an Interim Waiver from the test procedures applicable to Whirlpool's WCD7500VW model condensing clothes dryer. DOE is publishing the Whirlpool Petition for Waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The Petition contains no confidential information. DOE is interested in receiving comments on all aspects of the Petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on March 30, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

2000 M 63, Mail Drop 3005, Benton Harbor, Michigan 49022, Phone: 269/923–4647, *j.b.hoyt@whirlpool.com*

J.B. Hoyt,
Director, Government Relations,
May 12, 2008.

Mr. Alexander Karsner,
Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Re: Application for Interim Waiver and Petition for Waiver, 10 CFR 430, Subpart B, Appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Dear Assistant Secretary Karsner:

Whirlpool Corporation hereby submits this Application for Interim Waiver and Petition for Waiver pursuant to Title 10 CFR Sec. 430.27. This section provides for waiver of test methods on the grounds that a basic model contains design characteristics that either prevents testing according to the prescribed test procedure or produce data so unrepresentative of a covered product's true energy consumption characteristics as to provide materially inaccurate comparative data.

Whirlpool Corporation is a global manufacturer and marketer of major home appliances. As such, we have identified a segment of U.S. households that are unable to utilize conventional clothes dryers. This segment consists of high-rise apartments and condominiums and other housing units whose construction does not allow for external venting, at least not without

considerable remodeling or construction expense.

Whirlpool does not currently offer any condensing dryer for sale in the United States. To address the needs of this market segment it is our intent to import a 24'' wide compact (3.7 cubic feet) condensing dryer manufactured by Antonio Merloni, spA; the unit will be manufactured in Fabriano, Italy. This clothes dryer will comply with all recognized United States safety standards. Our marketing plans call for this product to be launched not later than the fourth quarter of 2008.

The existing test procedure, 10 CFR 430, Subpart B, Appendix D, was developed specifically for externally vented clothes dryers. One requirement is that a specific exhaust restriction be placed on the exhaust port of the dryer during the test. Condensing clothes dryers do not have an exhaust port to which a restriction can be attached. Therefore, the existing test procedure is not applicable. Indeed, the Department recognized this lack of applicability in the decision to grant a similar waiver to Miele Appliances, Incorporated (Case Number CD–001, 60FR930).

In light of this situation, Whirlpool requests an Interim Waiver and Waiver that will allow sale of one model without testing under 10 CFR, Subpart B. Appendix D until such time as that test procedure has language applicable to condensing clothes dryers. That model will be Whirlpool brand clothes dryer model WCD7500VW. Only a relatively small number of this clothes dryer will be sold by Whirlpool Corporation.

Additionally, Whirlpool commits to actively supporting the inclusion of a test procedure applicable to condensing dryers in future versions of 10 CFR 430, Subpart B, Appendix D. Indeed we are already working closely with the appliance trade association, the Association of Home Appliance Manufacturers, on a proposal for inclusion in the Department's current clothes dryer energy standards rulemaking.

Standards should not be used as a means to block innovative, improved designs. (See FTC Advisory Opinion No. 457, TRR 1718.20 (1971 Transfer Binder); 49 Fed. Reg. 32213 (Aug. 13, 1984); 52 Fed. Reg. 49141, 49147–48 (Dec. 30, 1987).) Whirlpool's design is an innovative way to dry a load of laundry and provides substantial benefits to the public. DOE's rules should accommodate and encourage—not act to block—such a product.

Condensing dryers are common in Europe. Granting the Interim Waiver and Waiver will also eliminate a non-tariff trade barrier.

Thank you for your timely attention to this request for Interim Waiver and Waiver. We hereby certify that all clothes dryer manufacturers of domestically marketed units known to Whirlpool Corporation have been notified by letter of this application, per copies of this letter.

Sincerely,

J.B. Hoyt.

[FR Doc. E9–7945 Filed 4–7–09; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Combined Notice of Filings #1

April 1, 2009.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC09–64–000.

*Applicants:* PPL Shoreham Energy, LLC, PPL Generation, LLC, PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC., PPL Renewable Energy, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act, Request for Waivers of Filing Requirements and Expedited Treatment of Application of PPL Shoreham Energy, LLC, *et al.*

*Filed Date:* 03/31/2009.

*Accession Number:* 20090331–5225.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 21, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG09–34–000.

*Applicants:* PPL New Jersey Solar, LLC.

*Description:* PPL New Jersey Solar, LLC Notice of Self Certification of Exempt Wholesale Generator Status.

*Filed Date:* 03/31/2009.

*Accession Number:* 20090331–5215.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 21, 2009.

*Docket Numbers:* EG09–35–000.

*Applicants:* PPL New Jersey Biogas, LLC.

*Description:* PPL New Jersey Biogas, LLC. Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 03/31/2009.

*Accession Number:* 20090331–5219.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 21, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER98–511–010.

*Applicants:* Oklahoma Gas and Electric Company, OGE Energy Resources, Inc.

*Description:* Oklahoma Gas and Electric Company submits Substitute Original Sheet 1 to FERC Electric Tariff, Sixth Revised Volume 3.

*Filed Date:* 03/26/2009.

*Accession Number:* 20090401–0049.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 16, 2009.

*Docket Numbers:* ER06–743–002.

*Applicants:* Air Liquide Large Industries U.S. LP.

*Description:* Amendment to Application for Determination of Category 1 Seller Status of Air Liquide Large Industries U.S. LP.

*Filed Date:* 03/31/2009.

*Accession Number:* 20090331–5228.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 21, 2009.

*Docket Numbers:* ER06–771–002; ER06–772–002; ER06–773–002.

*Applicants:* ExxonMobil Baton Rouge Complex, ExxonMobil Beaumont Complex, ExxonMobil Labarge Shute Creek Treating.

*Description:* ExxonMobil Entities submits Original Sheet No. 1 *et al.* to FERC Electric Tariff, Original Volume No. 1.

*Filed Date:* 03/26/2009.

*Accession Number:* 20090401–0048.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 16, 2009.

*Docket Numbers:* ER07–1040–004; ER00–2603–007; ER94–142–031

*Applicants:* Hopewell Cogeneration Ltd Partnership, Syracuse Energy Corporation, SUEZ Energy Marketing NA, Inc.

*Description:* Notice of Non-Material Change in Status of Hopewell Cogeneration Limited Partnership.

*Filed Date:* 03/30/2009.

*Accession Number:* 20090330–5154.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER08–73–003.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits Original Sheet 746A to FERC Electric Tariff, Fourth Replacement Volume 11.

*Filed Date:* 03/26/2009.

*Accession Number:* 20090331–0047.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 16, 2009.

*Docket Numbers:* ER08–830–001.

*Applicants:* ISO New England Inc. & New England Power Pool.

*Description:* ISO New England Inc *et al* submit reports regarding treatment of price-responsive demand in the New England Electricity Markets.

*Filed Date:* 03/27/2009.

*Accession Number:* 20090331–0046.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER08–891–002.

*Applicants:* Wisconsin Power and Light Company.

*Description:* Alliant Energy Corporate Services, Inc submits revised sheets reflecting Service Agreement 1 modification.

*Filed Date:* 03/27/2009.

*Accession Number:* 20090331–0051.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER08–911–002.
*Applicants:* Alliant Energy Corporate Services, Inc.
*Description:* Wisconsin Power and Light Company submits Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 13 re Wholesale Power Agreement.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0044.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER08–924–002.
*Applicants:* Alliant Energy Corporate Services, Inc.
*Description:* Wisconsin Power and Light Company *et al.* submits Original Sheet 1 to FERC Electric Tariff, Original Volume 13 re Wholesale Power Agreement.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0045.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–732–002.
*Applicants:* Windhorse Energy, Inc.
*Description:* Windhorse Energy, Inc submits an amended petition for acceptance of FERC Electric Tariff, Original Volume 1, Substitute Original Sheet 1.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090401–0058.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–886–000.
*Applicants:* Conectiv Vineland Solar, LLC.
*Description:* Conectiv Vineland Solar, LLC submits their Application for Authorization to make market-based wholesale sales of energy, capacity and ancillary services under FERC Electric Tariff 1, request for related waivers etc.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090330–0098.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–890–000.
*Applicants:* Windhorse Energy, LLC.
*Description:* Windhorse Energy, LLC request acceptance of Initial Tariff Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090330–0097.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–897–000.
*Applicants:* DC Energy Dakota LLC.
*Description:* Petition of DC Energy Dakota, LLC for Acceptance of Initial Tariff, Waivers and Blanket Authority.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090331–0042.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–899–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Pacific Gas and Electric Company submits a Service Agreement for Wholesale Distribution Tariff Service and an Interconnection Agreement with Hercules Municipal Utility etc.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090330–0023.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–905–000.
*Applicants:* National Grid USA Service Company, Inc.
*Description:* New York Independent System Operator, Inc *et al.* submits an executed Standard Large Generator Interconnection Agreement, and request waiver of the Commission's prior notice requirements, effective 3/11/09.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0021.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–906–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc submits proposed revisions to Schedule 10 of its Open Access Transmission Tariff, FERC Electric Tariff, Fourth Revised Volume 1.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0022.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–907–000.
*Applicants:* South Carolina Electric & Gas Company.
*Description:* South Carolina Electric & Gas Company submits revisions to section 2.2 of SCE&G's Open Access Transmission Tariff.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0043.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–908–000.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits updated Exhibit 2 to its First Revised Rate Schedule No 302.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0041.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–909–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation *et al.* submits page 9 of the filing letter with the signature regarding cost-based power sales agreement with Seminole Electric Cooperative, Inc.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090331–0049.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–910–000.
*Applicants:* Cogen Technologies Linden Venture, LLP.
*Description:* Cogen Technologies Linden Venture, LLP submits Shared Facilities and Coordinated Transmission Agreement and Indemnity between Linden Venture and its affiliate Linden VFT, LLC.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0040.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–911–000.
*Applicants:* South Carolina Electric & Gas Company.
*Description:* South Carolina Electric & Gas Company submits First Revised Sheet Agreement 102 to FERC Electric Tariff, Fourth Revised Volume 5.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0050.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–912–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Pacific Gas and Electric Company submits amendments to the Grizzly Development and Mokelumne Settlement Agreement etc.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090331–0061.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–913–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits amendments to Schedule 12—Appendix of the PJM Tariff etc.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090331–0062.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–914–000.
*Applicants:* Otter Tail Power Company.
*Description:* Otter Tail Power Company submits an unexecuted Pseudo-Tie Agreement among Otter Tail and Central Power Electric Cooperative, Inc, effective 2/28/09.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090331–0063.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–915–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc submits an executed Service Agreement for Network Integration Transmission Service with Kansas Electric Power Coop, Inc.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090331–0064.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–916–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool submits Original Service Agreement 1774 to FERC Electric Tariff, Fifth Revised Volume 1.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090401–0017.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–917–000.
*Applicants:* MidAmerican Energy Company.
*Description:* MidAmerican Energy Co submits an agreement governing joint ownership of facilities for the Grimes-Granger Project.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090401–0016.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–918–000.
*Applicants:* California Independent System Operator Corporation
*Description:* California Independent System Operator Corporation submits an amendment to the ISO Tariff that corrects technical differences between the ISO Tariff and Business Practice Manuals etc.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090401–0015.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–919–000.
*Applicants:* Tucson Electric Power Company.
*Description:* Tucson Electric Power Co submits Second Revised Sheet No. 96A *et al.* to FERC Electric Tariff, Fourth Revised Volume No. 2.
*Filed Date:* 03/30/2009.
*Accession Number:* 20090401–0021.
*Comment Date:* 5 p.m. Eastern Time on Monday, April 20, 2009.

*Docket Numbers:* ER09–921–000.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 13.
*Filed Date:* 03/31/2009.
*Accession Number:* 20090401–0019.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 21, 2009.

*Docket Numbers:* ER09–922–000.
*Applicants:* Southern Company Services, Inc.
*Description:* Southern Companies submits bilateral revisions to certain unit power sales agreements with Florida Power Corporation *et al.*
*Filed Date:* 03/27/2009.
*Accession Number:* 20090401–0018.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 2009.

*Docket Numbers:* ER09–923–000.
*Applicants:* Cleco Power LLC.
*Description:* Cleco Power LLC submits an Electric System Interconnection Agreement with Valley Electric Membership Corp *et al.*
*Filed Date:* 03/31/2009.
*Accession Number:* 20090401–0022.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 21, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07–32–007.
*Applicants:* Entergy Services, Inc.
*Description:* Entergy Services, Inc submits compliance/refund report relating to penalty assessments and distributions pursuant to Order No 890.
*Filed Date:* 03/27/2009.
*Accession Number:* 20090331–0060.
*Comment Date:* 5 p.m. Eastern Time on Friday, April 17, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–7893 Filed 4–7–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AC09–51–000]**

### Wyoming Interstate Company; Notice of Filing

April 1, 2009.

Take notice that on March 16, 2009, Wyoming Interstate Company (WIC) submitted a request for approval of its accounting treatment for changes in deferred tax balances. These adjustments result from the formation of a master limited partnership, El Paso Pipeline Partners, L.P., and its acquisition of an approximately 21 percent interest in WIC's assets during the formation process, along with a corresponding Internal Revenue Code Section 754 election. WIC states these adjustments reduce its deferred tax balances and increase its equity by approximately $11 million.

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 April 16, 2009.

**Kimberly Bose,**

*Secretary.*

[FR Doc. E9–7891 Filed 4–7–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI09–5–000]**

### Bishop Tungsten Development LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

April 1, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI09–5–000.

c. *Date Filed:* January 29, 2009.

d. *Applicant:* Bishop Tungsten Development LLC.

e. *Name of Project:* Pine Creek Mine Water Discharge System Sites 1 and 2 Hydroelectric Project.

f. *Location:* The proposed Pine Creek Mine Water Discharge System Sites 1 and 2 Hydroelectric Project will be located in the Bishop Tungsten Mine, in Inyo County, California, at T. 7 S, R. 30 E, secs. 5 and 8, Mount Diablo Meridian.

g. *Filed Pursuant to:* section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Douglas A. Hicks, 9050 Pine Creek road, Bishop, CA 93514; Telephone: (760) 387–2080; Fax: (760) 387–2080; e-mail: *http://www.dhicksaz@hotmail.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

j. *Deadline For Filing Comments, Protests, and/or Motions:* May 1, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Please include the docket number (DI09–5–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Pine Creek Mine Water Discharge System Sites 1 and 2 Hydroelectric Project will include: (1) Two intake sumps located in the Brownstone and Easy Go mine shafts; (2) a 10-inch diameter, 500-foot-long steel pipe conduit from Brownstone Intake Sump to Site 1 and a 16–24-inch diameter, 500-foot-long steel pipe conduit from Easy Go intake Sump to Site 1; (3) a 24-inch-diameter, 550-foot-long steel and HDPE pipe conduit from site 1 to Site 2; (4) two concrete and steel powerhouses, containing a 50-kW turbine generator and a 150-kW turbine generator; and (5) appurtenant facilities. The proposed project will occupy Federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and/or ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–7890 Filed 4–7–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AC09–50–000]**

### Colorado Interstate Gas Company; Notice of Filing

April 1, 2009.

Take notice that on March 16, 2009, Colorado Interstate Gas Company (CIG) submitted a request for approval of its accounting treatment for changes in deferred tax balances. These adjustments result from the formation of a master limited partnership, El Paso Pipeline Partners, L.P., and its acquisition of approximately a 2 percent

partnership interest in CIG during the formation process, along with a corresponding Internal Revenue Code Section 754 election. CIG states these adjustments reduce its deferred tax balances and increase its equity by approximately $3 million.

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 April 16, 2009.

**Kimberly Bose,**

*Secretary.*

[FR Doc. E9–7894 Filed 4–7–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. AC09–55–000]**

## Southern Natural Gas Company; Notice of Filing

April 1, 2009.

Take notice that on March 30, 2009, Southern Natural Gas Company (SNG) submitted a request for approval of its accounting treatment for changes in deferred tax balances. These adjustments result from the formation of a master limited partnership, El Paso Pipeline Partners, L.P., and its acquisition of an approximately two percent partnership interest in SNG during the formation process, along with a corresponding Internal Revenue Code Section 754 election. SNG states these adjustments reduce its deferred tax balances and increase its equity by approximately $5.5 million.

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 April 16, 2009.

**Kimberly Bose,**

*Secretary.*

[FR Doc. E9–7892 Filed 4–7–09; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2009–0114, FRL–8790–5]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Questionnaire for Drinking Water Utilities Participating in Emerging Contaminant Sampling Program (NEW); EPA ICR No. 2346.01 OMB Control No. 2080–NEW

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0114, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov*.
- *Fax:* 202–566–9744.
- *Mail:* Research and Development Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 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–ORD–2009–0114. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any

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

**FOR FURTHER INFORMATION CONTACT:** Susan T. Glassmeyer, Ph.D., Environmental Protection Agency, 26 W. Martin Luther King Dr., MS 564, Cincinnati, OH 45268; telephone number: 513–569–7526; fax number 513–569–7757; e-mail address: *glassmeyer.susan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2009–0114, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Research and Development Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

## What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What Information Collection Activity or ICR Does This Apply to?

*Affected Entities:* Entities potentially affected by this action are drinking water utilities that are participants in a joint EPA/USGS sampling program.

*Title:* Questionnaire for Drinking Water Utilities Participating in Emerging Contaminant Sampling Program (New).

*ICR Numbers:* EPA ICR No. 2346.01, OMB Control No. 2080–NEW.

*ICR Status:* This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* Improvements in analytical chemistry instrumentation have allowed scientists to detect trace amounts of chemicals that are commonly used in homes in the environment. These so-called ''emerging contaminants'' are chemicals, such as pharmaceuticals, personal care products, detergents and even endogenous hormones, which are either excreted from or washed off the body, and enter the wastewater treatment system. Wastewater treatment is not designed to specifically remove these chemicals, so a portion of the chemicals remain in wastewater treatment plant (WWTP) effluents. WWTP effluents are commonly released into surface waters. Natural processes such as photolysis, sorption, volatilization, degradation, and simple dilution further attenuate the concentrations of emerging contaminants. However, if a Drinking Water Treatment Plant (DWTP) intake is located downstream of a WWTP effluent outfall, there is a potential for these chemicals to be present in finished drinking water.

The EPA's Office of Research and Development, in collaboration with the U.S. Geological Survey, is conducting a sampling program at up to 50 DWTPs to determine the presence of these emerging contaminants in both the source water and finished drinking water. To better interpret the results of

the sampling program, detailed information concerning the operation of the DWTP at the time of sampling is required. This information can only be gathered through a questionnaire that is completed concurrent to the collection event. The questionnaire will collect information on the following:

- The population served by the DWTP;
- The source water, potential sources of pollution and current hydraulic conditions;
- Detailed treatment steps used by the DWTP, including parameters such as pumpage at sampling, disinfectants used, and distribution system information;
- Detailed water quality parameters at the time of sampling.

The EPA will distribute the questionnaire to the DWTPs at the time of sampling along with the sampling supplies.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated Total Number of Potential Respondents:* 50.

*Frequency of Response:* One time.

*Estimated Total Average Number of Responses for Each Respondent:* 10.

*Estimated Total Annual Burden Hours:* 500.

*Estimated Total Annual Costs:* $14,992.50. This cost includes $250 for operation and maintenance costs incurred by the respondents for photocopying and postage. No capital costs are included.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: March 30, 2009.

**Linda Sheldon,**

*Acting Director, National Exposure Research Laboratory.*

[FR Doc. E9–7960 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2009–0225; FRL–8790–4]**

## Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of three meetings of the Board of Scientific Counselors (BOSC) Clean Air Subcommittee.

**DATES:** The first meeting (a teleconference call) will be held on Thursday, April 30, 2009, from 1:30 p.m. to 3:30 p.m. EST. The second meeting (a teleconference call) will be held on Thursday, May 21, 2009, from 10:30 a.m. to 12:30 p.m. EST. The third meeting (face-to-face) will begin on Monday, June 8, 2009 and conclude on Wednesday, June 10, 2009. The meetings may adjourn early if all business is finished. Requests for the draft agendas or for making oral presentations at the meetings will be accepted up to one business day before each meeting.

**ADDRESSES:** The face-to-face meeting will be held at the EPA's RTP Main Campus Facility, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0225, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2009–0225.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2009–0225.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2009–0225.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2009–0225.

**Note:** This is not a mailing address. 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–ORD–2009–0225. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* 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 Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: Heather Drumm, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**General Information**

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at any of the meetings may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the first teleconference include, but are not limited to: Overview of materials provided to the subcommittee; Overview of ORD; Overview of ORD's Clean Air Program; Subcommittee discussion. Proposed agenda items for the second teleconference include, but are not limited to: Overviews of each of the Long Term Goals for the Clean Air Research Program. Proposed agenda items for the face-to-face meeting include, but are not limited to: Overviews, poster sessions and client testimonials for each of the long term goals; Subcommittee discussions. The meetings are open to the public.

*Information on Services for Individuals with Disabilities:* For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov*. To request accommodation of a disability, please contact Heather Drumm, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 31, 2009.

**Fred Hauchman,**

*Director, Office of Science Policy.*

[FR Doc. E9–7957 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2007–0191; FRL–8409–6]**

## Pesticide Program Dialogue Committee, Pesticide Registration Improvement Act Process Improvement Workgroup; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA's Pesticide Program Dialogue Committee (PPDC), Pesticide Registration Improvement Act (PRIA) Process Improvement Workgroup will hold its twelfth public meeting on April 20, 2009. An agenda for this meeting is being developed. The agenda will include a discussion of improvements in the consistency of labeling and in the content of and the ability to search the pesticide programs website. The workgroup is developing advice and recommendations on topics related to EPA's registration and registration review process.

**DATES:** The meeting will be held on Monday, April 20, 2009, from 1 p.m. to 4 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Leovey, Immediate Office, 7501P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7328; fax number: (703) 308–4776; e-mail address: *leovey.elizabeth@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 particular interest to persons who are concerned about implementation of the Pesticide Registration Improvement Renewal Act (PRIA 2), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Federal Food, Drug, and Cosmetic Act (FFDCA). Other potentially affected entities may include but are not limited to agricultural workers and farmers; pesticide industry trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2007–0191. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

**II. Background**

EPA's Office of Pesticide Programs (OPP) is entrusted with the

responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides. The PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995 for a 2–year term and has been renewed every 2 years since that time. The PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from the use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request. Copies of the minutes of past meetings of this workgroup are available on *http://www.epa.gov/pesticides/ppdc/pria/index.html*.

### III. How Can I Request To Participate in this Meeting?

This meeting will be open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. The public may participate by telephone by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting by giving a copy of the statement to the person listed under **FOR FURTHER INFORMATION CONTACT**. These statements will become part of the permanent record and will be available for public inspection at the address listed under Unit 1.B.1. Do not submit any information in your request that is considered CBI.

### List of Subjects

Environmental protection.

Dated: March 26, 2009.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

[FR Doc. E9–7989 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0045; FRL–8407–6]**

## Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before May 8, 2009.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number and the pesticide petition number (PP) for the petition of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

*New Tolerance Exemptions*

1. *PP 9F7514.* (EPA–HQ–OPP–2007–0573). Bayer CropScience LP, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish an exemption from the requirement of a tolerance for residues of the plant-incorporated protectant (PIP), *Bacillus thuringiensis* Cry2Ae insect control protein and the genetic material necessary for its production, in or on all food commodities. The analytical method, an enzyme-linked immunosorbent assay (ELISA) of restriction enzyme digests of deoxyribonucleic acid (DNA) for production of the Cry 2Ae protein, is available to EPA for the detection and measurement of the pesticide residues. Contact: Shanaz Bacchus, (703) 308–8097, *bacchus.shanaz@epa.gov*.

2. *PP 8F7508.* (EPA–HQ–OPP–2009–0194). Novozymes Biologicals, Inc., 5400 Corporate Circle, Salem, VA 24153, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial insecticide, *Metarhizium anisopliae* strain F52, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Shanaz Bacchus, (703) 308–8097, *bacchus.shanaz@epa.gov*.

3. *PP 9F7539.* (EPA–HQ–OPP–2009–0179). Pasteuria BioScience, Incorporated, 12085 Research Drive, Suite 185, Alachua, FL 32615, submitted by MacIntosh and Associates, Incorporated, 1203 Hartford Avenue, Saint Paul, MN 55116–1622, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial nematicide, *Pasteuria usgae*, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Jeannine Kausch, (703) 347–8920, *kausch.jeannine@epa.gov*.

*New Temporary Tolerance Exemption*

*PP 9G7532.* (EPA–HQ–OPP–2009–0189). Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048, proposes to establish temporary exemption from the requirement of a tolerance for residues of the biochemical plant growth regulator, S-Abscisic Acid, (S)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid, in or on leafy vegetables, herbs and spices, pome fruit, stone fruit, and pineapples. Because this petition is a request for an exemption

from the requirement of a temporary tolerance without numerical limitations, no analytical method is required. Contact: Chris Pfeifer, (703) 308–0031, *pfeifer.chris@epa.gov*.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 20, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–7673 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0045; FRL–8407–4]**

## Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before May 8, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

**II. What Action is the Agency Taking?**

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

*New Tolerances*

1. *PP 8E7433*. (EPA–HQ–OPP–2009-0013). The Interregional Research Project Number 4 (IR-4), IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR 180.603 for the combined residues of the insecticide dinotefuran, (RS)-1-methyl-2-nitro-3-(tetrahydro-3-furylmethyl)guanidine and its major metabolites DN, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and UF, 1-methyl-3-(tetrahydro-3-furylmethyl)-urea in or on brassica, leafy greens, subgroup 5B at 17.0 parts per million (ppm) and turnip, greens at 17.0 ppm. The IR–4 submitted this petition on behalf of the registrants, Valent USA Corporation and Mitsui Corporation, Minato-ku, Tokyo, Japan. Mitsui Chemicals, Inc., has submitted practical analytical methodology for detecting and measuring levels of dinotefuran and its metabolites, UF and DN, in or on raw agricultural commodities. The high performance liquid chromatography (HPLC) method was validated for determination of dinotefuran, DN and UF in or on tomatoes and peppers, cucurbits, brassica, grapes, potatoes, and lettuce for raw agricultural commodity matrices and in or on tomato paste and puree, grape juice and raisins and potato chips, granules, and wet peel for processed commodity matrices. After extraction with a water/acetonitrile mixture and clean up with hexane and extraction columns, concentrations of dinotefuran and its metabolites were quantified after HPLC separation by tandem mass spectrometry (MS/MS) detection. The limit of quantitation was 0.01 ppm for all matrices. Contact: Sidney Jackson, (703) 305–7610, *jackson.sidney@epa.gov*.

2. *PP 8E7447*. (EPA–HQ–OPP–2009-0012). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR 180.544 for residues of the insecticide methoxyfenozide and its metabolites RH-117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N'-(3-hydroxy-2-methylbenzoyl) hydrazide, RH-151,055 glucose conjugate of RH-117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N-[3( -[beta]-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH-152,072 the malonylglycosyl conjugate of RH-117,236 in or on fruit, citrus, group 10 at 2.0 ppm and citrus oil at 70 ppm for tolerances with regional registrations; and pea and bean, dried shelled, except soybean, subgroup 6C at 0.35 ppm; pomegranate at 0.6 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 125 ppm; and corn, pop, forage at 30 ppm. Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities, as derived from Dow AgroSciences GRM 02.25, ''Determination of Residues of Methoxyfenozide in High Moisture Crops by Liquid Chromatography with Tandem Mass Spectrometry Detection'' which has been validated. This method is based on enforcement method TR 34-00-28 developed by Rohm and Haas which has been extensively validated, including an independent laboratory validation. It was judged to be adequate to enforce tolerances for indirect or inadvertent residues of methoxyfenozide and relevant metabolites in/on high and low moisture rotational crops. Contact: Sidney Jackson, (703) 305–7610, *jackson.sidney@epa.gov*.

3. *PP 8E7480*. (EPA–HQ–OPP–2009–0176). BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709, proposes to establish an import tolerance in 40 CFR 180.517 for residues of the insecticide mixture comprising fipronil (5-amino-1[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-trifluoromethyl)sulfinyl]-1H-pyrazole-3-carbonitrile) and its metabolites 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl)sulfonyl]-1H-pyrazole-3-carbonitrile and 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl-4-[(trifluoromethyl)thio]-H-pyrazole-3-carbonitrile and its photodegradate 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-(trifluoromethyl)-1H-pyrazole-3-carbonitrile] in or on rice, grain at 0.04 ppm. Validated analytical methods are available for detecting and measuring levels of fipronil and its metabolites in rice. The method utilizes capillary gas chromatography equipped with a Ni electron capture detector. Alternatively, a liquid chromatography with tandem mass spectrometry (LC/MS/MS) detector

may be used. The limit of quantitation for rice is 0.01 ppm for all analytes. The limit of detection is 0.003 ppm for all analytes. Contact: Bonaventure Akinlosotu, (703) 605–0653, *akinlosotu.bonaventure@epa.gov*.

4. *PP 8E7481*. (EPA–HQ–OPP–2009–0092). IR–4, IR–4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR 180.431(a) for the combined residues of the herbicide clopyralid, (3,6-dichloro-2-pyridinecarboxylic acid) in or on swiss chard at 5.0 ppm and bushberry subgroup 13–07B at 6.0 ppm; and to establish a tolerance in 40 CFR 180.431(c) with regional restrictions for residues of clopyralid in or on strawberry, annual at 4.0 ppm. An adequate residue analytical method is available for enforcement of the tolerances. This method determines clopyralid as the methyl ester by gas chromatography using electron capture detection. This method has been successfully validated by the EPA and has been published in FDA's Pesticide Analytical Manual, Volume II (PAM II). Contact: Laura Nollen, (703) 305–7390, *nollen.laura@epa.gov*.

5. *PP 8E7492*. (EPA–HQ–OPP–2009–0018). IR–4, IR–4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR 180.510 for residues of the insecticide pyriproxyfen in or on vegetable, leaves of root and tuber, group 2 at 2.0 ppm; vegetable, leafy, except brassica, group 4 at 3.0 ppm; vegetable, foliage of legume, group 7 at 2.0 ppm; artichoke, globe at 2.0 ppm; asparagus at 2.0 ppm; watercress at 2.0 ppm; and small fruit vine climbing subgroup, except grape 13-07E at 0.35 ppm. Practical analytical methods for detecting and measuring levels of pyriproxyfen (and relevant metabolites) have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. The EPA has successfully validated the analytical methods for analysis of cottonseed, pome fruit, nutmeats, almond hulls, and fruiting vegetables. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances. Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

6. *PP 8E7506*. (EPA–HQ–OPP–2009–0032). IR–4, IR–4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish tolerances in 40 CFR 180.574 for residues of the fungicide fluazinam (3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl) phenyl]-5-(trifluoromethyl)-2-pyridinamine) in or on lettuce, head at 0.02 ppm; lettuce, leaf at 2.0 ppm; onion, bulb, subgroup 3-07A at 0.15 ppm; and bushberry subgroup 13-07B at 4.5 ppm. An analytical method using gas chromatography with electron capture detection (GC-ECD) for the determination of fluazinam residues on blueberry, lettuce and onion has been developed and validated. The method involves solvent extraction followed by liquid partitioning and concentration prior to a final purification using column chromatography. The method has been successfully validated by an independent laboratory using peanut nutmeat as the matrix. The limit of quantitation (LOQ) of the method is 0.01 ppm in lettuce and onion, and 0.02 in blueberry. An analytical method using reversed-phase HPLC with ultraviolet (UV) absorbance detection for the determination of AMGT residues on blueberry has been developed and validated. The limit of quantitation of the method for AMGT is 0.04 ppm in/on blueberry. Contact: Laura Nollen, (703) 305–7390, *nollen.laura@epa.gov*.

7. *PP 7F7197*. (EPA–HQ–OPP–2009–0184). Cheminova A/S, c/o Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209, proposes to establish tolerances in 40 CFR part 180 for residues of the fungicide flutriafol in or on apple at 0.2 ppm; apple, wet pomace at 0.3 ppm; soybean at 0.3 ppm; soybean, aspirated grain fractions at 0.5 ppm; liver, (cattle, goat, hog, horse, and sheep) at 0.01 ppm. Residues of flutriafol in plants and plant products can be determined by gas chromatography using thermionic nitrogen specific detection (GC/NPD) for soybeans or mass selective detection (GC/MS) for apples. The method was validated for determination of residues of flutriafol in apples, soybeans, and the corresponding processed commodities. Residues of 1,2,4-triazole (T), triazole alanine (TA), and triazole acetic acid (TAA) can be determined by HPLC employing mass spectrometric detection (LC/MS/MS). Each analyte can be determined separately after extraction, clean-up and/or derivatization specific for each analyte. Residues of flutriafol in animal matrices can be determined by gas chromatography with mass selective detection (GC/MS). The method was validated for determination of residues of flutriafol in milk, muscle, kidney, liver, and egg. Contact: Tamue Gibson, (703) 305–9096, *gibson.tamue@epa.gov*.

8. *PP 8F7424*. (EPA–HQ–OPP–2009–0003). Canyon Group LLC, c/o Gowan Company, 370 South Main St., Yuma, AZ 85364, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide halosulfuron-methyl in or on soybeans at 0.05 ppm. A practical analytical method, gas chromatography with a nitrogen-specific detector, is available for enforcement purposes. The limit of detection is 0.003 ppm. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

9. *PPs 8F7430 and 8F7439*. (EPA–HQ–OPP–2009–0009). E.I. du Pont de Nemours & Company, Laurel Run Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to establish tolerances in 40 CFR 180.451 for residues of the herbicide chlorimuron-ethyl (ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl) amino]carbonyl]amino]sulfonyl] benzoate in or on (PP 8F7430) corn, field, grain at 0.01 ppm; corn, field, forage at 0.5 ppm; corn, field, stover at 2.0 ppm; corn, field, meal at 0.014 ppm; corn, field, flour at 0.015 ppm; corn, aspirated grain fractions at 1.28 ppm; and (PP 8F7439) soybean, seed at 0.01 ppm; soybean, forage at 0.45 ppm; soybean, hulls at 0.04 ppm; soybean, aspirated grain fractions at 2.79 ppm; and soybean hay at 1.8 ppm. The nature of residues of chlorimuron-ethyl is adequately understood and an acceptable analytical method is available for enforcement purposes. The method procedure used solid phase extraction (SPE) for extract purification and reversed phased HPLC coupled with a triple quadrupole mass spectrometer using an electrospray interface (ESI) operating in positive ion mode with tandem mass spectrometric (MS/MS) detection. A LOD was estimated for each analyte in the range of 0.0007–0.002 mg/kg. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

10. *PPs 8F7431 and 8F7440*. (EPA–HQ–OPP–2009–0004). E.I. du Pont de Nemours & Company, Laurel Run Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to establish tolerances in 40 CFR 180.478 for residues of the herbicide rimsulfuron: *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide in or on (PP 8F7440) corn, field, grain at 0.01 ppm; corn, field, forage at 0.4 ppm; corn, field, stover at 2.5 ppm; and (PP 8F7431) soybean, seed at 0.01 ppm; soybean, forage at 0.25 ppm; and soybean, hay at 1.2 ppm. Adequate

analytical methodology, HPLC with electrospray interface-tandem mass spectrometry (ESI-MS/MS) detection, is available for enforcement purposes. The two methods are ''Analytical Method for the Determination of Rimsulfuron in Watery and Dry Crop Matrices by HPLC/ESI-MS/MS'', DuPont Report 15033 and ''Analytical Method for the Determination of Rimsulfuron in Oily Crop Matrices by HPLC/ESI-MS/MS'', DuPont Report 15027. The limit of quantitation for rimsulfuron with these methods, in raw agricultural commodities and in processed fractions, is 0.01 ppm. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

11. *PPs 8F7432 and 8F7441*. (EPA–HQ–OPP–2009–0005). E.I. du Pont de Nemours & Company, Laurel Run Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to establish tolerances in 40 CFR 180.451 for residues of the herbicide tribenuron methyl (methyl 2-[[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino] carbonyl]amino]sulfonyl]benzoate) in or on (PP 8F7441) corn, field, grain at 0.01 ppm; corn, field, forage at 0.2 ppm; corn, field, stover at 1.1 ppm; corn, aspirated grain fractions at 3.55 ppm; and (PP 8F7432) soybean, seed at 0.01 ppm; soybean, forage at 0.06 ppm; soybean, hulls at 0.04 ppm; soybean, aspirated grain fractions at 3.46 ppm; and soybean, hay at 0.25 ppm. Various analytical methods are available for the determination of residues of tribenuron methyl in plant matrices. An analytical method was developed for the determination of multiple sulfonylureas including tribenuron methyl and sulfonylurea herbicide residues in oily crop matrices including soybean seed, field corn, and their processed commodities. The target LOQ for each analyte was 0.010 mg/kg (ppm). The method procedure used SPE for extract purification and reversed-phased HPLC coupled with a triple quadrupole mass spectrometer using an ESI operating in positive ion mode with tandem MS/MS detection. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

12. *PP 8F7442*. (EPA–HQ–OPP–2008–0937). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528, proposes to establish tolerances in 40 CFR 180.463 for residues of the herbicide quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid in or on grass, forage at 105 ppm and grass, hay at 70 ppm. An adequate analytical method for enforcement of the tolerances exists. The analytical method used for quantitative determinations was designed to measure quinclorac residues present as the parent compound. Contact: Hope Johnson, (703) 305–5410, *johnson.hope@epa.gov*.

13. *PPs 8F7443 and 8F7448*. (EPA–HQ–OPP–2009–0002). Monsanto Company, 1300 I St., NW, Suite 450 East, Washington DC 20052, (a member of the Acetochlor Registration Partnership, ARP), proposes to establish tolerances in 40 CFR 180.470 for residues of the herbicide acetochlor (2-chloro-2'-methyl-6'-ethyl-N-ethoxymethylacetanilide) and its metabolites containing either the 2-ethyl-6-methylaniline (EMA) or the 2-(1-hydroxyethyl)-6-methyl-aniline (HEMA) moiety, to be expressed as acetochlor equivalents, when present therein as a result of the application of acetochlor to soil or growing crops in or on (P8F7443) cotton, undelinted seed at 0.6 ppm and cotton, gin byproducts at 4.0 ppm; and (PP 8F7448) soybean, seed at 1.0 ppm. An adequate enforcement method for residues of acetochlor in crops has been approved. Acetochlor and its metabolites are hydrolyzed to either EMA or HEMA, which are determined by high performance liquid chromatography-OCED (HPLC-OCED) and expressed as acetochlor equivalents. Contact: Vickie Walters, (703) 305–5704, *walters.vickie@epa.gov*.

14. *PP 8F7464*. (EPA–HQ–OPP–2009–0163). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide trifloxystrobin (Benzeneacetic acid, (E,E)-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-methyl ester) and the free form of its acid metabolite CGA-321113 ((E,E)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid), in or on vegetable, tuberous and corm, subgroup 1C at 0.04 ppm; artichoke, globe at 1 ppm; leafy greens, subgroup 4A at 15 ppm; leafy petioles, group 4B at 7 ppm; brassica, head and stem, subgroup 5A at 1.1 ppm; brassica, leafy greens, subgroup 5B at 12 ppm; fruit, small fruit vine climbing, subgroup 13-07F, except fuzzy kiwifruit at 2 ppm; berry, lowgrowing, subgroup 13-07G at 1.1 ppm; herb, subgroup 19A at 120 ppm; and spice, subgroup 19B, except black pepper at 50 ppm. A practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities has been submitted. The LOD for each analyte of this method is 0.08 ng injected, and the LOQ is 0.02 ppm. The method is based on crop specific cleanup procedures and determination by gas chromatography with nitrogen-phosphorus detection. A newer analytical method is available employing identical solvent mixtures and solvent to matrix ratio (as the first method), deuterated internal standards, and LC/MS-MS with an electrospray interface, operated in the positive ion mode. The LOD for trifloxystrobin range from 0.002 ppm to 0.01 ppm, depending on the crops, and the LOQ is 0.01 ppm. Contact: Rosemary Kearns, (703) 305–5611, *kearns.rosemary@epa.gov*.

15. *PP 8F7482*. (EPA–HQ–OPP–2009–0162). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide difenoconazole, (1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole) in or on almond, hulls at 7 ppm; brassica, head and stem, subgroup 5A at 1.9 ppm; brassica, leafy green, subgroup 5B at 30 ppm; citrus, dried pulp at 2.5 ppm; citrus, oil at 28 ppm; grape at 4 ppm; grape, raisin at 14 ppm; nut, tree, group 14 at 0.03 ppm; onion, bulb, subgroup 3-07A at 6 ppm; onion, green, subgroup 3-07B at 0.15 ppm; pistachio at 0.03 ppm; and vegetables, cucurbit, group 9 at 0.7 ppm. Syngenta Crop Protection, Inc. has submitted a practical analytical method (AG-575B) for detecting and measuring levels of difenoconazole in or on food with a LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. The EPA has validated this method and copies have been provided to the FDA for insertion into the pesticide analytical manual (PAM) II. Method REM 147.08 is also available as an enforcement method, for the determination of residues of difenoconazole in crops. Residues are quantified by LC/MS/MS. Contact: Rosemary Kearns, (703) 305–5611, *kearns.rosemary@epa.gov*.

16. *PP 8F7488*. (EPA–HQ–OPP–2009–0029). Nippon Soda Co., Ltd., c/o Nisso America, Inc., 45 Broadway, Suite 2120, New York, NY 10006, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide cyflufenamid, in or on cucurbit crop group at 0.05 ppm; pome fruit crop group at 0.05 ppm; apple, wet pomace at 0.1 ppm; grape (and other small climbing vine fruit (except fuzzy kiwifruit)) crop group at 0.015 ppm; raisin at 0.3 ppm; and strawberry (and other low growing berries) crop group at 0.2 ppm. Based upon the metabolism of cyflufenamid in plants (i.e., parent cyflufenamid as the major residue) and the toxicology of the parent compound, quantification of the parent cyflufenamid is sufficient to determine toxic residues. As a result, a method was developed using solvent extraction

of cyflufenamid from crops and analyzing sample extracts by LC/MS/MS. The LOQ for the method was calculated to be 0.01 ppm. Contact: Samantha Hulkower, (703) 603–0683, *hulkower.samantha@epa.gov*.

17. *PP 8F7501*. (EPA–HQ–OPP–2009–0057). E. I. DuPont de Nemours and Company, DuPont Crop Protection, P.O. Box 80038, Wilmington, DE 19880–0038, proposes to establish tolerances in 40 CFR part 180 for residues of the herbicide nicosulfuron, 3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl) aminosulfonyl))-N,N-dimethyl in or on grass, forage at 9.0 ppm; grass, hay at 25.0 ppm; fat (of cattle, goat, hog, horse, and sheep) at 0.05 ppm; meat (of cattle, goat, hog, horse, and sheep) at 0.05 ppm; meat byproducts (of cattle, goat, hog, horse, and sheep) at 0.05 ppm; milk at 0.05 ppm; and milk, fat at 0.02 ppm. Adequate analytical methodology, high-pressure liquid chromatography with ESI-MS/MS detection, is available for enforcement purposes. The two methods are ''Analytical Method for the Determination of Nicosulfuron (DPX-V9360) and its metabolite IN-V9367 in pasture grass by (high performance liquid chromatography/electrospray interface-tandem mass spectrometry) HPLC/ESI-MS/MS'', DuPont Report 17928 and ''Analytical Method for the Determination of Nicosulfuron (DPX-V9360) and its metabolite IN-V9367 in animal tissues by HPLC/ESI-MS/MS'', DuPont Report 17927. The limit of quantitation for nicosulfuron with these methods, in raw agricultural commodities and in processed fractions, is 0.01 ppm. Contact: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

18. *PP 9F7520*. (EPA–HQ–OPP–2008–0556). Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, proposes to establish a tolerance in 40 CFR 180.566 for residues of the insecticide fenpyroximate and its z-isomer in or on low-growing berries, subgroup 13-07G at 1.0 ppm. Based upon the metabolism of fenpyroximate in plants and the toxicology of the parent and metabolites, quantification of the parent, fenpyroximate and the z-isomer, combined as fenpyroximate is sufficient to determine toxic residue in plants. As a result an enforcement method has been developed which involves extraction of fenpyroximate from crops with acetone, filtration, partitioning and cleanup, and analysis by gas chromatography using a nitrogen/phosphorous detector. The method has undergone independent laboratory validation. Contact: Melody Banks, (703) 305–5413, *banks.melody@epa.gov*.

19. *PP 9F7523*. (EPA–HQ–OPP–2009–0134). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR 180.439 for residues of the herbicide thifensulfuron methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino] carbonyl] amino] sulfonyl]-2-thiophenecarboxylate), in or on safflower, seed at 0.05 ppm. Samples were analyzed for residues of thifensulfuron-methyl using liquid chromatography (LC). The lowest level of method validation (LLMV) for each matrix in this study, i.e., safflower seed, meal and oil, was 0.05 ppm of thifensulfuron-methyl. The LOQ for the method for safflower seed was 0.027 ppm of thifensulfuron-methyl. The estimated LOQ for meal and oil were calculated at 0.039 ppm, and 0.0068 ppm of thifensulfuron-methyl, respectively. The LOD for the method for safflower seed was 0.0090 ppm of thifensulfuron-methyl. The estimated LOD for meal and oil were 0.013 ppm, and 0.0023 ppm of thifensulfuron-methyl, respectively. Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

*Amended Tolerances*

1. *PP 8E7447*. (EPA–HQ–OPP–2009–0012). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to delete the tolerance in 40 CFR 180.544 for residues of the insecticide methoxyfenozide and its metabolites RH-117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N'-(3-hydroxy-2-methylbenzoyl) hydrazide, RH-151,055 glucose conjugate of RH-117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N-[3(-[beta]-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH-152,072 the malonylglycosyl conjugate of RH-117,236 in or on dry bean seed at 0.24 ppm since it is a member of the proposed pea and bean, dried shelled, except soybean, subgroup 6C under ''New Tolerance'' number 2 of this document. Contact: Sidney Jackson, (703) 305–7610, *jackson.sidney@epa.gov*.

2. *PP 8E7474*. (EPA–HQ–OPP–2009–0076). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to increase the tolerances in 40 CFR 180.507 for residues of the fungicide azoxystrobin: (methyl (E)-2-{2-[6-(2-cyanophenoxy) pyrimidin-4-yloxy]phenyl}-3-methoxyacrylate) and the Z isomer of azoxystrobin,(methyl (Z)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]pheny1}-3-methoxyacrylate) in or on barley, grain from 0.1 ppm to 3.0 ppm and barley, straw from 4.0 ppm to 7.0 ppm. An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The EPA concluded that the methods are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry and eggs which also underwent successful independent laboratory validations. Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

3. *PP 8E7506*. (EPA–HQ–OPP–2009–0032). IR-4, IR-4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, proposes to delete the existing tolerances in 40 CFR 180.574 for residues of the fungicide fluazinam (3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl) phenyl]-5-(trifluoromethyl)-2-pyridinamine) in or on aronia berry; buffalo currant; chilean guava; european barberry; highbush cranberry; edible honeysuckle; jostaberry; juneberry; lingonberry; native currant; salal; sea buckthorn; and bushberry subgroup 13B at 7.0 ppm. Contact: Laura Nollen, (703) 305–7390, *nollen.laura@epa.gov*.

*New Tolerance Exemptions*

1. *PP 8E7477*. (EPA–HQ–OPP–2009–0165). Huntsman Corporation, 10003 Woodloch Forest Dr., The Woodlands, TX 77380, proposes to establish an exemption from the requirement of a tolerance in 40 CFR 180.920 for residues of tallowamine, ethoxylated, mixture of dihydrogen phosphate monohydrogen phosphate esters and the corresponding ammonium, calcium, potassium, and sodium salts of the phosphate esters, where the poly(oxyethylene) content averages 2–20 moles (CAS Reg. No. 68308–48–5) when used as a pesticide inert ingredient in pesticide formulations in or on all raw agricultural commodities. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Alganesh Debesai, (703) 308–8353, *debesai.alganesh@epa.gov*.

2. *PP 8E7490*. (EPA–HQ–OPP–2009–0047). Rohm and Haas Chemicals LLC, 100 Independence Mall West, Philadelphia, PA 19106–2399, proposes to establish an exemption from the requirement of a tolerance in 40 CFR

180.960 for residues of 2-propenoic acid, butyl ester polymer with ethyl 2-propenoate and N-(hydroxymethyl)-2-propenamide (CAS Reg. No. 33438–19–6) when used as a pesticide inert ingredient in pesticide formulations in or on raw agricultural commodities. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

3. *PP 8E7504*. (EPA–HQ–OPP–2009–0138). Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN, 46268, proposes to establish an exemption from the requirement of a tolerance for residues of 2-Propanol, 1,1',1''-nitrilotris-(TIPA) (CAS Reg. No. 122–20–3) under 40 CFR 180.910 when used as a pesticide inert ingredient for use as a neutralizer in pesticide formulations. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Lisa Austin, (703) 305–7894, *austin.lisa@epa.gov*.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E9–7965 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0222; FRL–8409–4]**

## Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's receipt of an initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before May 8, 2009.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number EPA–HQ–OPP–2009–0222 and the pesticide petition number (PP) 8F7489, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2009–0222 and the pesticide petition number (PP) 8F7489. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Greene, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703 308-0352; e-mail address: *greenecheryl@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the

disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What Action is the Agency Taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

*New Tolerance Exemption*

EPA has received a pesticide petition PP 8F7489 from EcoSMART Technologies, Inc., 3600 Mansell Road, Suite 150, Alpharetta, GA 30022 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide 2-Phenethyl Propionate.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–7988 Filed 4–7–09; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0184; FRL–8407–9]**

## Pesticide Products; Registration Applications for Flutriafol

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Comments must be received on or before May 8, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0184, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2009–0184. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Tamue L. Gibson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9096; e-mail address: *gibson.tamue@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

### *B. 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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

### List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 26, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E9–7672 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0102; FRL–8407–5]**

## Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Comments must be received on or before May 8, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0102, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2009–0102. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511P), listed in the table in this unit:

| Regulatory Action Leader | Telephone Number and E-mail Address | Mailing Address | File Symbol |
|---|---|---|---|
| Shanaz Bacchus<br>Denise Greenway | (703) 308–8097<br>*bacchus.shanaz@epa.gov*<br>(703) 308–8263<br>*greenway.denise@epa.gov* | Biopesticides and Pollution Prevention Division (7511P),<br>Office of Pesticides, Environmental Protection Agency,<br>1200 Pennsylvania, Ave., NW., Washington, DC 20460–0001 | 264–RNOA |
| Shanaz Bacchus | (703) 308–8097<br>*bacchus.shanaz@epa.gov* | Do. | 264–RNOL |
| Denise Greenway | (703) 308–8263<br>*greenway.denise@epa.gov* | Do. | 264–RNOU |
| Alan Reynolds | (703) 605–0515<br>*reynolds.alan@epa.gov* | Do. | 85694–R |

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

### *B. 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. Registration Applications**

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

*File Symbol:* 264–RNOA. *Applicant:* Bayer Crop Science – BioScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* Twinlink Cotton. *Active ingredients: Bacillus thuringiensis* Cry1Ab and Cry2Ae insect control proteins and the genetic material necessary for their production in event T304–40 × GHB119 cotton. *Proposal classification/Use:* Plant Incorporated Protectant/ insecticide. (S. Bacchus/D. Greenway)

*File Symbol:* 264–RNOL. *Applicant:* Bayer Crop Science – BioScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* BCS Cry2Ae Cotton. *Active ingredient: Bacillus thuringiensis* Cry2Ae insect control protein and the genetic material necessary for its production (from plasmid pTEM12) in event GHB119 cotton. *Proposal classification/Use:* Plant Incorporated Protectant/ insecticide (S. Bacchus).

*File Symbol:* 264–RNOU. *Applicant:* Bayer Crop Science – BioScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product name:* BCS Cry1Ab Cotton *Active ingredient: Bacillus thuringiensis* Cry 1Ab insect control protein and the genetic material necessary for its production (from plasmid pTDL008) in event T304–40 cotton. *Proposal classification/Use:* Plant Incorporated Protectant/ insecticide. (D. Greenway).

*File Symbol:* 85694–R. *Applicant:* 4260864 Canada, Inc., 104 Rhapsodie, Notre-Dame-de-l'lle, Perrot, Quebec J7V8P1, Canada c/o W.F. Stoneman Company LLC, P.O. Box 465, McFarland, WI 53558. *Product name:* Sarritor Granular Biological Herbicide. *Active ingredient:* Sclerotinia minor IMI 344141 at 64.24%. *Proposal classification/Use:* Microbial pesticide/ Herbicide (A. Reynolds).

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: March 20, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–7668 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0207; FRL–8408–4]**

## Petition Requesting Cancellation of Propoxur Pet Collar Uses; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is seeking public comment on a November 26, 2007 petition from the Natural Resources Defense Council (NRDC), requesting that the Agency cancel propoxur pet collar uses. The petitioner, NRDC, requests this action because they believe that modifications to the non-dietary oral exposure pathway presented in the Revised N-methyl Carbamate (NMC) Cumulative Risk Assessment (CRA) underestimate exposure to propoxur from pet collar uses.

**DATES:** Comments must be received on or before June 8, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0207, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2009–0207. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Monica Wait, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347-8019; fax number: (703) 308-7070; e-mail address: *wait.monica@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, farm worker, 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

*What Action is the Agency Taking?*

EPA requests public comment during the next 60 days on a petition received from the NRDC requesting that the Agency cancel all pet collar uses for the pesticide propoxur. NRDC submitted a petition dated November 26, 2007 as a public comment to the Revised N-methyl Carbamate Cumulative Risk Assessment docket (available under docket ID number EPA–HQ–OPP–2007–0935). NRDC claims that the NMC CRA underestimates exposure to propoxur from pet collar uses, that there are effective alternatives to this use, and therefore, EPA should cancel all pet collar uses for propoxur. NRDC states that exposure levels from pet collars for household children may be significantly higher than EPA estimates through common daily activities and intimate contact between children and pets. NRDC cites specific revised hand-to-mouth exposure parameters and claims that these revisions to the NMC CRA non-dietary exposure assessment are biased towards reducing the exposure estimate, making it appear that the pet collar uses do not exceed the Agency's level of concern.

EPA's 1997 Reregistration Eligibility Decision (RED) for Propoxur is available on EPA's pesticide webpage at http://www.epa.gov/pesticides/reregistration/status.htm. The 2007 NMC CRA, related documents, and comments are available in the electronic docket at http://www.regulations.gov/ and can be found under the docket number provided in the paragraph above.

**List of Subjects**

Environmental protection, Natural Resources Defense Council, pesticides and pests, propoxur.

Dated: March 25, 2009.

**Richard P. Keigwin, Jr.,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E9–7991 Filed 4–7–09; 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

*Agreement No.*: 010099–049.

*Title:* International Council of Containership Operators.

*Parties:* A.P. Moller-Maersk A/S; ANL Container Line Pty Ltd.; American President Lines, Ltd.; APL Co. Pte. Ltd.; APL Ltd.; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; COSCO Container Lines Co. Ltd; Crowley Maritime Corporation; Delmas SAS; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Line Ltd.; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; Safmarine Container Line N.V.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

*Filing Party:* John Longstreth, Esq.; K & L Gates LLP; 1601 K Street, NW.; Washington, DC 20006–1600.

*Synopsis:* The amendment would add Compañía Chilena de Navegación Interoceánica S.A. as a party to the agreement.

*Agreement No.*: 012066–001.

*Title:* ''K'' Line/Abou Merhi Space Charter and Cooperative Working Agreement.

*Parties:* Abou Merhi Lines, S.A.L.; and Kawasaki Kisen Kaisha, LTD.

*Filing Party:* John P. Meade, Esq.; Vice President-Law; ''K'' Line America, Inc.; P.O. Box 9; Preston, MD 21655.

*Synopsis:* The amendment adds Libya to the geographic scope of the agreement.

By Order of the Federal Maritime Commission.

Dated: April 3, 2009.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E9–7952 Filed 4–7–09; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

TTR Multimodal Freight Forwarder, LLC dba TTR Multimodal, 8336 NW. 68th Street, Miami, FL 33166. *Officers:* Leon B. Zilbersztajen (Qualifying Individual), Antonio Cesar P. DeMiranda.

Miriam Family Cargo Inc., 18 NW., 12th Ave., Miami, FL 33128. *Officer:* Miriam Bennett, President (Qualifying Individual).

Sterling Logistics Group, LLC, 18 Augusta Pines Drive, Ste. 283–W, Spring, TX 77389. *Officer:* George J. Tobey, Vice President (Qualifying Individual).

Infinity Moving & Storage Inc., 175 Walnut Ave., Bronx, NY 10454. *Officers:* Janis Benhaim, Secretary (Qualifying Individual), Guy Lavi, President.

Speedy International, LLC, 451 Victory Ave., South San Francisco, CA 94080. *Officer:* Michael Chan, Manager (Qualifying Individual).

Unico Logistics USA, Inc., 10711 Walker Street, Ste. B, Cypress, CA 90630. *Officer:* Young C. Jang, CFO (Qualifying Individual).

Premier Projects International, LLC, 521 N. Sam Houston Pkwy, Ste. 555, Houston, TX 77060. *Officers:* Ricardo A. Flores, Vice President (Qualifying Individual), Nestor Bernabe, President.

Go Global Logistics, LLC, 8 New Street, Boston, MA 02128. *Officers:* Aleksei Svetozarev, Vice President (Qualifying Individual), George T. Mylonakis,Owner.

ASG Corporation dba RJL Logistics, AS Lito Road, Koblerville Village, CK Saipan, MP 96950. *Officers:* Wilfredo A. Echavez, Vice President (Qualifying Individual), Floresto S. Segismundo, President.

Autico International, LLC, 1139 East Jersey Street, Elizabeth, NJ 07201. *Officers:* Konstantin Efremidi, Manager (Qualifying Individual), Nikolay Voutchkov, Partner.

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Continental Freight Forwarding, Inc., 5900 NW., 97th Avenue, #6, Doral, FL 33178. *Officer:* Joseph A. Ciero, President (Qualifying Individual).

S. Cubed Pacorini Logistics, LLC, 5240 Coffee Drive, New Orleans, LA 70115. *Officer:* Jeanne Shows-Andre, Managing Member (Qualifying Individual).

Shiprotectors, Inc., 6399 Wilshire Blvd., Ste. #315, Los Angeles, CA 90048. *Officer:* Kevin J. Gregory, President (Qualifying Individual).

Demar International Cargo, Corp., 8075 NW., 68th Street, Miami, FL 33166. *Officers:* Rafael A. Marmolejos, President (Qualifying Individual), Norma Marmolejos, Vice President.

South America Overseas Corp., 1574 NW., 82nd Ave., Miami, FL 33126. *Officer:* Jose R. Gantus, President (Qualifying Individual).

Heron International, Inc., 6961 Highway 225, Deer Park, TX 77536. *Officer:* David Garza, President (Qualifying Individual).

NJS Warehousing & Distribution Services LLC dba Venture Logistics, 10850 NW., 21st Street, Miami, FL 33172. *Officer:* Javier J. Salazar, Manager (Qualifying Individual).

DTI Group Inc. 10913 NW., 30th Street, Miami, FL 33172. *Officer:* Sebastian A. Detullio, President (Qualifying Individual).

Real Logistics Forwarders Inc., 9905 NW., 116th Way, Medley, FL 33178–1113. *Officer:* Elizabeth Alexander, Chairman (Qualifying Individual).

Schneider Logistics International, Inc. dba Schneider Logistics, 22351 S. Wilmington Ave., Carson, CA 90745. *Officer:* Theresa A. Fulton, Asst. Secretary (Qualifying Individual).

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants**

Harris International Freight Forwarders, Inc., 2033 Second Ave., Ste. 1510, Seattle, WA 98121. *Officer:* Michael W. Harris, President (Qualifying Individual).

Delphi Logistics Corp. dba Delphi Logistics, 2023 NW., 84th Ave., Ste. 205, Miami, FL 33122. *Officers:* Piedad D. Castrillon, Vice President (Qualifying Individual), Alonso Silva, President.

Dated: April 3, 2009.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E9–7953 Filed 4–7–09; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 2009.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. David L. Sokol, Omaha, Nebraska;* to acquire control of 14 percent of the voting shares of Middleburg Financial Corporation, and thereby indirectly acquire Middleburg Bank, Middleburg, Virginia.

Board of Governors of the Federal Reserve System, April 3, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–7920 Filed 4–7–09; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 2009.

**A. Federal Reserve Bank of Kansas City** (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Jonah Bankshares, Casper, Wyoming;* to become a bank holding company by acquiring 100 percent of the voting shares of Jonah Bank, Casper, Wyoming.

Board of Governors of the Federal Reserve System, April 3, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–7919 Filed 4–7–09; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Toxicology Program (NTP); Report on Carcinogens (RoC); Availability of the Draft Background Document for Glass Wool Fibers; Request for Comments on the Draft Background Document; Announcement of the Glass Wool Fibers Expert Panel Meeting

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

**ACTION:** Availability of Draft Background Document; Request for Comments; and Announcement of a Meeting.

**SUMMARY:** The NTP announces the availability of the draft background document for glass wool fibers by April 9, 2009, on the RoC Web site (*http://ntp.niehs.nih.gov/go/29679*) or in printed text from the RoC (see **ADDRESSES** below). The NTP invites the submission of public comments on the draft background document for glass wool fibers. An expert panel will meet on June 9–10, 2009, at the Sheraton Chapel Hill Hotel, One Europa Drive, Chapel Hill, NC 27514 to peer review the draft background document for glass wool fibers and, once completed, make a recommendation regarding the listing status (i.e., known to be a human carcinogen, reasonably anticipated to be a human carcinogen, or not to list) for glass wool fibers or categories of glass wool fibers (that is ''certain'' glass wool fibers) in the 12th RoC. The RoC expert panel meeting is open to the public with time scheduled for oral public comments. Attendance is limited only by the available meeting room space. Following the expert panel meeting and completion of the expert panel report, the NTP will post the final background document and the expert panel peer review report on the RoC Web site.

**DATES:** The expert panel meeting for glass wool fibers will be held on June 9–10, 2009. The draft background document for glass wool fibers will be available for public comment by April 9, 2009. The deadline to submit written comments is May 22, 2009, and the deadline for pre-registration to attend the meeting and/or provide oral comments at the meeting is June 1, 2009.

**ADDRESSES:** The RoC expert panel meeting on glass wool fibers will be held at the Sheraton Chapel Hill Hotel, One Europa Drive, Chapel Hill, NC 27514. Access to on-line registration and materials for the meeting are available on the RoC Web site (*http://ntp.niehs.nih.gov/go/29679*). Comments on the draft background document should be sent to Dr. Ruth M. Lunn, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709, FAX: (919) 541–0144, or *lunn@niehs.nih.gov*. Courier address: Report on Carcinogens Center, 530 Davis Drive, Room 2006, Durham, NC 27713. Persons needing interpreting services in order to attend should contact (301) 402–8180 (voice) or (301) 435–1908 (TTY). Requests should be made at least seven business days in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ruth M. Lunn, Director, RoC Center, (919) 316–4637, *lunn@niehs.nih.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

The NTP announced the RoC review process for the 12th RoC on April 16, 2007 in the **Federal Register** (72FR18999 available at *http://ntp.niehs.nih.gov/go/15208*). An expert panel meeting is being convened on June 9–10, 2009, to review glass wool fibers for the 12th RoC. The draft background document for glass wool fibers will be available on the RoC website by April 9, 2009, or in printed text from the RoC Center (see **ADDRESSES** above). Persons can register free-of-charge with the NTP listserv (*http://ntp.niehs.nih.gov/go/231*) to receive notification when draft RoC background documents for candidate substances for the 12th RoC are made available on the RoC Web site.

Glass wool refers to fine glass fibers forming a mass resembling wool and is most commonly used for insulation and filtration. Two categories of glass wool based upon commercial application are insulation glass wool and special-purpose fibers. Insulation glass wools are used for applications such as thermal, electrical, and acoustical insulation and in weatherproofing, while the term ''special-purpose glass fibers'' is used to describe a category of fibers distinguished by their use in specialized products that include aircraft and aerospace insulation, battery separators, and high efficiency filters. Although having different uses, there is not a clear separation between the physico-chemical properties of insulation glass wools and special purpose fibers.

Glass wool (respirable size) is currently listed in the 11th RoC as reasonably anticipated to be a human carcinogen, and has been nominated for removal from the RoC. The draft background document reviews the literature on glass wool fibers. There are considerable differences in the chemical compositions and physical characteristics of glass fibers, which may influence the toxicology and potential carcinogenicity of the fibers. The expert panel will be asked to review glass wool fibers and make a recommendation on the listing status of glass wool fibers or categories of glass wool fibers in the RoC.

#### Preliminary Agenda and Registration

Preliminary agenda topics include:

- Oral public comments on glass wool fibers.
- Peer review of the draft background document on glass wool fibers.
- Recommendation on the listing status of glass wool fibers in the 12th RoC and scientific justification.

The meeting is scheduled for June 9–10, 2009, from 8:30 a.m. to adjournment each day. A copy of the preliminary agenda, expert panel roster, and any

additional information, when available, will be posted on the RoC Web site or may be requested from the Director of the RoC Center (see **ADDRESSES** above). Individuals who plan to attend the meeting are encouraged to register on-line by June 1, 2009, to facilitate planning for the meeting.

**Request for Comments**

The NTP invites both written and oral public comments on the draft background document on glass wool fibers. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Lunn (see **ADDRESSES** above) for receipt by May 22, 2009. All written comments identified by the individual's name, affiliation, and sponsoring organization (if applicable) will be posted on the RoC Web site prior to the meeting and distributed to the expert panel for their consideration in the peer review of the draft background document and/or preparation for the meeting.

Time will be set aside at the expert panel meeting for the presentation of oral public comments. Seven minutes will be available for each speaker (one speaker per organization). Persons wishing to present oral comments can register on-line or contact Dr. Lunn (see **ADDRESSES** above). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, e-mail and sponsoring organization (if any). If possible, send a copy of the statement or talking points to Dr. Lunn by June 1, 2009. This statement will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on June 9–10, 2009, from 7:30–8:30 a.m. Time allowed for comments by on-site registrants may be less than for pre-registered speakers and will be determined by the number of persons who register at the meeting to give oral comments. Persons registering at the meeting are asked to bring 25 copies of their statement or talking points for distribution to the expert panel and for the record.

**Background Information on the RoC**

The RoC is a congressionally mandated document [Section 301(b)(4) of the Public Health Services Act, 42 U.S.C. 241(b)(4)], that identifies and discusses agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a hazard to human health by virtue of their carcinogenicity. Substances are listed in the report as either known or reasonably anticipated to be human carcinogens. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services.

Information about the RoC and the nomination process can be obtained from its homepage (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Lunn (see **FOR FURTHER INFORMATION CONTACT** above). The NTP follows a formal, multi-step process for review and evaluation of selected substances. The formal evaluation process is available on the RoC Web site (*http://ntp.niehs.nih.gov/go/15208*) or in printed copy from the RoC Center.

Dated: March 30, 2009.

**John R. Bucher,**

*Associate Director, National Toxicology Program.*

[FR Doc. E9–7881 Filed 4–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### Agency Information Collection Activities; Proposed Collection; Comment Request; Annual Reporting Requirements for the Older Americans Act Title VI Grant Program

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Performance Reports for Title VI grantees.

**DATES:** Submit written or electronic comments on the collection of information by June 8, 2009.

**ADDRESSES:** Submit electronic comments on the collection of information to: *Yvonne.Jackson@aoa.hhs.gov.* Submit written comments on the collection of information to Yvonne Jackson, Administration on Aging, Washington, DC 20201 or by fax to (202) 357–3560.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Jackson at (202) 357–3501 or *Yvonne.Jackson@aoa.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60- day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

AoA estimates the burden of this collection of information as follows: Annual submission of the Program Performance Reports are due 90 days after the end of the budget period and final project period. *Respondents:* Federally Recognized Tribes, Tribal and Native Hawaiian Organizations receiving grants under Title VI, Part A, Grants for Native Americans; Title VI, Part B, Native Hawaiian Program and Title VI, Part C, Native American Caregiver Support Program. *Estimated Number of Responses:* 246. *Total Estimated Burden Hours:* 614.

Dated: April 3, 2009.

**Edwin L. Walker,**

*Acting Assistant Secretary for Aging.*

[FR Doc. E9–7968 Filed 4–7–09; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket Number NIOSH–161]**

### Request for Information on Carbon Nanotubes (CNTs) Including Single-Walled Carbon Nanotubes (SWCNTs) and Multi-Walled Carbon Nanotubes (MWCNTs)

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of public comment period.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) intends to evaluate the scientific data on carbon nanotubes (CNTs) and develop appropriate communication documents, such as an Alert and/or Current Intelligence Bulletin, which will convey the potential health risks and recommend measures for the safe handling of these materials. NIOSH has developed guidelines for managing the potential health concerns associated with occupational exposures to engineered nanoparticles [see: *http://www.cdc.gov/niosh/topics/nanotech/safenano/*] which will provide the framework for developing specific recommendations for CNTs.

NIOSH is requesting information on the following: (1) Published and unpublished reports and findings from *in vitro* and *in vivo* toxicity studies with CNTs, (2) information on possible health effects observed in workers exposed to CNTs, (3) information on workplaces and products in which CNTs can be found, (4) description of work tasks and scenarios with a potential for exposure, (5) workplace exposure data, and (6) information on control measures (e.g., engineering controls, work practices, personal protective equipment) that are being used in workplaces where potential exposures to CNTs occur.

*Public Comment Period:* Comments must be received by May 15, 2009.

**ADDRESSES:** You may submit comments, identified by docket number NIOSH–161, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov*.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket*, and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ralph D. Zumwalde, NIOSH, Robert A. Taft Laboratories, MS–C32, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8320.

**SUPPLEMENTARY INFORMATION:** Nanotechnology is generally defined as the intentional manipulation of matter to form novel structures with one or more dimension or features less than 100 nanometers (nm). Nanotechnology involves a wide range of chemistries and almost unlimited types of structures that have highly unpredictable interactions with biological systems. Carbon nanotubes (CNTs) are a type of nanomaterial comprised of a sheet of graphite (a hexagonal lattice of carbon) rolled into a cylinder that can have a length-to-width ratio greater than 1,000. Carbon nanotubes are produced having a single cylinder carbon wall (single-walled carbon nanotubes [SWCNT]) or having multiple walls-cylinders nested within other cylinders (multi-walled carbon nanotubes [MWCNT]). CNTs range in diameter from about 1–2 nanometers for SWCNTs to dozens of nanometers for MWCNTs with lengths extending into the micrometer range.

There are several major techniques used in the synthesis of CNTs. The arc-evaporation technique involves passing a current of about 50 A between two graphite electrodes in an atmosphere of helium in the presence of metal catalysts (Co, Ni). The second method is chemical vapor deposition, where nanotubes are formed by decomposition of a carbon-containing gas with use of nano-sized catalytic particles usually Fe, Co, Yt or Ni. The advantage of catalytic synthesis over arc-evaporation is the ability to scale-up for volume production. The third method for making CNTs, laser ablation, involves employment of a powerful laser to vaporize metal (Co and Ni)-graphite targets. Of the three major processes, chemical vapor deposition is the most prominent one that is currently used for CNT production.

Due to their unique physical and chemical properties, CNTs have sparked much research into developing novel applications. CNTs are ideal non-biodegradable materials; they are stronger then steel, flexible, lightweight, heat resistant, and have high electrical conductivity. The market for CNTs is estimated to grow substantially over the next decade. They are currently used in a variety of applications including: Electronics, reinforced plastics, micro-fabrication conjugated polymer activators, biosensors, enhanced electron/scanning microscopy imaging techniques, and in pharmaceutical/biomedical devices for drug delivery and medical diagnostics. Estimates of the number of workers potentially exposed to CNTs are unavailable due to limited exposure data and its relatively recent introduction into domestic commerce.

The toxic nature of SWCNTs and MWCNTs in humans is not known. Recently published in vitro and in vivo studies with some SWCNTs and MWCNTs describe adverse effects including their ability to be cytotoxic when tested in various cell cultures, and cause acute inflammation and early onset of fibrosis when delivered to the lungs of mice by pharyngeal aspiration or inhalation. No occupational exposure limits for CNTs have been established by NIOSH or the Occupational Safety and Health Administration (OSHA).

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to CNTs. Examples of requested information include, but not limited to, the following: (1) Identification of industries or occupations in which exposures to CNTs may occur.

(2) Trends in the production and use of CNTs.

(3) Description of work tasks and scenarios with a potential for exposure to CNTs.

(4) Workplace exposure measurement data in various types of industries and jobs.

(5) Case reports or other health information demonstrating potential health effects in workers exposed to CNTs.

(6) Research findings from in vitro and in vivo toxicity studies.

(7) Information on control measures (e.g., engineering controls, work practices, PPE) being taken to minimize worker exposure to CNTs.

Dated: March 31, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–7941 Filed 4–7–09; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Criteria for Vaccination Requirements for U.S. Immigration Purposes

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) is seeking public comment on a set of proposed criteria to be used in determining which vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) for the general United States population should be required for immigrants seeking admission into the United States or seeking adjustment of status to that of an alien lawfully admitted for permanent residence. Under section 212 of the Immigration and Nationality Act (INA) (8 U.S.C. 1182), an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, must present documentation for having received vaccination for ''vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee on Immunization Practices.'' Because the INA explicitly requires vaccinations for some vaccine-preventable diseases (mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type B and hepatitis B), CDC will continue to require those vaccinations for immigrants seeking admission into the United States or seeking to adjust their status to that of legal permanent resident. CDC has developed specific criteria to determine which other vaccinations recommended by ACIP for the general population will be required for such immigrants. Through this notice, CDC proposes to begin use of the following criteria:

1. The vaccine must be an age-appropriate vaccine as recommended by ACIP for the general U.S. population, *and*

2. At least one of the following:

a. The vaccine must protect against a disease that has the potential to cause an outbreak.[1]

b. The vaccine must protect against a disease that has been eliminated in the United States, or is in the process for elimination in the United States.

The evolution of vaccine development has progressed to include those targeting specific groups and chronic morbidity and mortality. Therefore, CDC is now developing specific criteria to be applied against each vaccine in lieu of requiring all ACIP recommended vaccines for immigration purposes. CDC has taken a scientific, evidence-based, public health approach in developing these criteria, and has considered the unique characteristics of the time and place of the medical screening process for U.S. immigration purposes.

Using specific scientific-based criteria to determine the relevant vaccines required for U.S. immigration purposes will ensure CDC decision-making regarding vaccination requirements is grounded in public health necessity and need in light of a growing list of vaccines for infectious and non-infectious diseases.

After consideration of public comments received through this notice, as well as those received during an ACIP meeting held at CDC February 25–26, 2009, CDC will publish a notice regarding implementation of the final criteria for determining which vaccines recommended by ACIP for the U.S. population will be required for immigrants in accordance with section 212(a)(1)(A)(ii) of the Immigration and Nationality Act, Section 212 (8 U.S.C. 1182(a)(1)(A)(ii)).

CDC will continue to work closely with the Department of Homeland Security and the Department of State in the implementation of the vaccination requirements for U.S. immigration purposes.

**DATES:** Written comments must be received on or before May 8, 2009. Comments received after April 8, 2009 will be considered to the extent possible.

[1] For purposes of this Notice, ''potential to cause an outbreak'' means the occurrence of more cases of disease than could be anticipated in a given area or among a specific group of people over a particular period of time. In general, and as observed through previous experience, an outbreak is associated with a public health response.

**ADDRESSES:** You may submit written comments to the following address: Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Attn: Immigration Vaccination Requirements, 1600 Clifton Road, NE., MS E–03, Atlanta, Georgia, 30333.

You may also submit written comments via e-mail to *DGMQpubliccomments@cdc.gov*.

**FOR FURTHER INFORMATION CONTACT:** David M. McAdam, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Road, NE., MS E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

**SUPPLEMENTARY INFORMATION:**

### Background

Medical examinations for immigration purposes are authorized under section 232 of the Immigration and Nationality Act (INA) (8 U.S.C. 1222) Under sections 212(a)(1) and 232 of the INA (8 U.S.C. 1182(a)(1) and 1222), and section 325 of the Public Health Service Act (42 U.S.C. 252), the Department of Health and Human Services (HHS) establishes requirements for the medical examination. The Secretary of HHS has delegated this authority to the Centers for Disease Control and Prevention (CDC), and it is administered by CDC's Division of Global Migration and Quarantine (DGMQ). These requirements are codified in 42 CFR part 34, Medical Examination of Aliens. Panel physicians and civil surgeons, through contractual agreements and by designations with the Department of State and the Department of Homeland Security, respectively, conduct the medical examinations in accordance with these regulations and as provided for in Technical Instructions (TIs) issued by CDC/DGMQ. The vaccination requirements for U.S. immigration purposes are listed in the Technical Instructions (*see http://www.cdc.gov/ncidod/dq/technica.htm*).

Under section 212(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(A)(ii)), an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, must present documentation for having received vaccination for ''vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type B and hepatitis B, and any other

vaccinations against vaccine-preventable diseases recommended by the Advisory Committee on Immunization Practices[(ACIP).]'' The ACIP is a committee chartered under the Federal Advisory Committee Act (FACA). The ACIP makes vaccine recommendations for the U.S. population to the CDC Director, who, in accordance with FACA, is ultimately responsible for accepting, rejecting, or modifying those recommendations. Any immigrant or applicant applying for adjustment of status in the U.S., who is unable to present proof of vaccination, is inadmissible into the United States unless the immigrant or applicant receives the required vaccines or applies for and receives a statutory waiver. Such waivers may be issued if, for example, during the medical examination, the examiner determines that a vaccination is not medically appropriate.

Since 1996, when the vaccination requirement was added to the INA, all vaccinations routinely *recommended* by ACIP for the U.S. population have been *required* for immigrants subject to the INA vaccination requirement. Although this vaccination requirement has been in effect since 1996, the continued evolution of vaccine development has led CDC to reassess the appropriateness for each recommended vaccine in the context of U.S. immigration in the interest of public health.

**Implementation of Specific Vaccination Criteria**

The ACIP recommendations regarding vaccines are extremely important for optimizing individual health status, protecting the public health of the Nation, and providing technical guidance for State-based mandates for school, child care, employment and other settings. However, to date, the ACIP recommendations have been applied to persons undergoing medical examination for U.S. immigration without consideration for the unique characteristics of such screening, which include the urgency of time in which the vaccination is required and the location of the individual immigrant, or group of immigrants, at the time of the medical examination. While the ACIP vaccination recommendations are appropriate for the general U.S. population, CDC is proposing specific criteria to determine which ACIP-recommended vaccines are appropriate as a requirement at the time and place of medical examination for immigration. For example, within these criteria, vaccinations will be administered to applicants if they are considered to be ''age-appropriate'' as recommended by ACIP for the general U.S. population (*i.e.* the applicant is within the ACIP-recommended age groups of the vaccine at the time of the examination). Once it is determined that a vaccine is age-appropriate, the vaccine will only be administered if it is determined to be appropriate in the immigration setting due to the potential of diseases to cause outbreaks and/or to be introduced into the United States, where they have been eliminated or are in the process of elimination. In contrast, all other ACIP recommended vaccines should be administered once the applicant is admitted to the United States according to CDC immunization schedule and State-based vaccination mandates.

Therefore, CDC is proposing to implement the vaccination requirements provided for in section 212(a)(1)(A)(ii) of the INA as follows: Because section 212(a)(1)(A)(ii) explicitly requires vaccinations for listed vaccine-preventable diseases (mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type B and hepatitis B), CDC will continue to require those vaccinations for immigrants seeking admission into the United States or seeking to adjust their status to the status of legal permanent resident. CDC will use the criteria below for determining which additional vaccines recommended by ACIP for the general population will be required for such immigrants. All vaccines will remain subject to statutory waivers, if applicable. In addition, CDC will review the list of vaccines recommended by ACIP for the general U.S. population on a regular basis and apply the specific criteria to determine which additional vaccines will be required for U.S. immigration purposes.

CDC proposes to use the following criteria:

1. The vaccine must be an age-appropriate vaccine as recommended by ACIP for the general U.S. population, *and*

2. At least one of the following:

a. The vaccine must protect against a disease that has the potential to cause an outbreak.[2]

b. The vaccine must protect against a disease that has been eliminated in the United States, or is in the process for elimination in the United States.

Through the issuance of revised Technical Instructions and other standard operating procedures, CDC upon application of the criteria will notify the panel physicians and civil surgeons who conduct the medical examination of any changes to the vaccination requirements for U.S. immigration purposes.

[2] For purposes of this Notice, ''potential to cause an outbreak'' means the occurrence of more cases of disease than could be anticipated in a given area or among a specific group of people over a particular period of time. In general, and as observed through previous experience, an outbreak is associated with a public health response.

Dated: April 1, 2009.

**James D. Seligman,**

*Chief Information Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–7934 Filed 4–7–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Office of Community Services; Notice To Award a Non-Competitive Successor Grant to Neighborhood Assets

**AGENCY:** Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice to award a non-competitive successor grant to Neighborhood Assets.

*CFDA#:* 93.602.

*Project Period:* September 30, 2004 to September 29, 2009.

*Award Amount:* 100,000.

**Statutory Authority:** The Assets for Independence Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Act of 1998, as amended, Pub. L. 105–285, 42 U.S.C. 604 note).

**SUMMARY:** Notice is hereby given that the Administration for Children and Families (ACF), Office of Community Services (OCS) will award a non-competitive successor grant to Neighborhood Assets, a non-profit organization located in Spokane, Washington. The Assets for Independence program supports grantees that provide low-income individuals and families with access to special matched savings accounts called individual development accounts (IDAs) and other asset-building tools such as financial literacy education and coaching and training on money management and consumer issues. The award will enable the Neighborhood Assets to implement an Assets for Independence project serving low-income families in Spokane, Washington. This action is taken as the original grantee, Spokane Neighborhood Action Programs, has relinquished the grant.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Gatz, Manager, Assets for

Independence Program, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, by telephone on (202) 401–4626 or by e-mail at *AFIprogram@acf.hhs.gov*.

Dated: March 23, 2009.

**Yolanda J. Butler,**

*Acting Director, Office of Community Services.*

[FR Doc. E9–7999 Filed 4–7–09; 8:45 am]

**BILLING CODE**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Office of Community Services; Notice To Award a Non-Competitive Successor Grant to Neighborhood Assets

**AGENCY:** Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice to award a non-competitive successor grant to Neighborhood Assets.

*CFDA#:* 93.602.

*Project Period:* September 30, 2004 to September 29, 2009.

*Award Amount:* 35,000.

**Statutory Authority:** The Assets for Independence Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Act of 1998, as amended, Public Law 105–285, 42 U.S.C. 604 note).

**SUMMARY:** Notice is hereby given that the Administration for Children and Families (ACF), Office of Community Services (OCS) will award a non-competitive successor grant to Neighborhood Assets, a non-profit organization located in Spokane, Washington. The Assets for Independence program supports grantees that provide low-income individuals and families with access to special matched savings accounts called individual development accounts (IDAs) and other asset-building tools such as financial literacy education and coaching and training on money management and consumer issues. The award will enable the Neighborhood Assets to implement an Assets for Independence project serving low-income families in Spokane, Washington. This action is taken as the original grantee, Spokane Neighborhood Action Programs, has relinquished the grant.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Gatz, Manager, Assets for Independence Program, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, by telephone on (202) 401–4626 or by e-mail at *AFIprogram@acf.hhs.gov*.

Dated: March 23, 2009.

**Yolanda J. Butler,**

*Acting Director, Office of Community Services.*

[FR Doc. E9–8005 Filed 4–7–09; 8:45 am]

**BILLING CODE**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0490]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Voluntary Cosmetic Registration Program

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Voluntary Cosmetic Registration Program'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**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 the **Federal Register** of December 16, 2008 (73 FR 76360), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0030. The approval expires on February 29, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: April 1, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–7878 Filed 4–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0397]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; State Enforcement Notifications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''State Enforcement Notifications'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**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 the **Federal Register** of November 18, 2008 (73 FR 68430), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0275. The approval expires on March 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: April 1, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–7906 Filed 4–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–D–0398]**

### International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 4B on Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms General Chapter; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4B: Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms General Chapter.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions.''

**DATES:** Submit written or electronic comments on agency guidance at any time.

**ADDRESSES:** Submit written requests for single copies of the 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; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research (CBER) at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the 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 guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance:* Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

*Regarding the ICH:* Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 5, 2008 (73 FR 45465), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4B: Microbiological Examination of Non-Sterile Products: Tests for Specified Micro-organisms General Chapter.'' The notice gave interested persons an opportunity to submit comments by October 6, 2008.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4B: Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms General Chapter'' was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2008.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated

by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. 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. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written comments on the guidance. 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.

### III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: March 31, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–7873 Filed 4–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–D–0370] (formerly Docket No. 2007–D–0266)**

### International Conference on Harmonisation; Guidance on Q10 Pharmaceutical Quality System; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q10 Pharmaceutical Quality System.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance describes a model for an effective quality management system for the pharmaceutical industry, referred to as the Pharmaceutical Quality System. The guidance is intended to provide a comprehensive approach to an effective pharmaceutical quality system that is based on International Organization for Standardization (ISO) concepts, includes applicable good manufacturing practice (GMP) regulations and complements ICH guidances on ''Q8 Pharmaceutical Development'' and ''Q9 Quality Risk Management.''

**DATES:** Submit written or electronic comments on agency guidance at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the 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 guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance:* Joseph C. Famulare, Center for Drug Evaluation and Research (HFD–300), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5266, Silver Spring, MD 20993–0002, 301–796–3100;

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200, Rockville, MD 20852, 301–827–0373; or

Diana Amador-Toro, Office of Regulatory Affairs (HFR-CE350), Food and Drug Administration, 10 Waterview Blvd., Parsippany, NJ 07054, 973–331–4915.

*Regarding the ICH:* Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of July 13, 2007 (72 FR 38604), FDA published a notice announcing the availability of a draft guidance entitled ''Q10 Pharmaceutical Quality System.'' The notice gave interested persons an opportunity to submit comments by October 11, 2007.

After consideration of the comments received and revisions to the guidance,

a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in June 2008.

The ICH Q10 guidance provides recommendations for a comprehensive approach to an effective pharmaceutical quality system that is based on ISO concepts, includes applicable GMP regulations and complements ICH ''Q8 Pharmaceutical Development'' and ''Q9 Quality Risk Management.'' The guidance describes a model for a pharmaceutical quality system that can be implemented throughout the different stages of a product lifecycle. Much of the content of the guidance applicable to manufacturing sites is currently specified by regional GMP requirements. The guidance is not intended to create any new expectations beyond current regulatory requirements.

The ICH Q10 guidance demonstrates industry and regulatory authorities' support of an effective pharmaceutical quality system to enhance the quality and availability of medicines around the world in the interest of public health. Implementation of the provisions of the guidance throughout the product lifecycle should facilitate innovation and continual improvement and strengthen the link between pharmaceutical development and manufacturing activities.

In 2006, FDA published a guidance for industry entitled ''Quality Systems Approach to Pharmaceutical Current Good Manufacturing Practice Regulations'' (October 2, 2006, 71 FR 57980). The 2006 guidance describes the key elements of a robust quality systems model and shows how implementation of such a model is one way to comply with FDA's current good manufacturing practice (CGMP) regulations. The 2006 guidance shows the correlation of ICH Q10 quality system components to FDA's CGMP regulations.

The ICH Q10 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. 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. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written comments on the guidance. 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.

Dated: March 31, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–7875 Filed 4–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–D–0396]**

### International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 4A on Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests General Chapter; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4A: Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests General Chapter.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions.''

**DATES:** Submit written or electronic comments on agency guidance at any time.

**ADDRESSES:** Submit written requests for single copies of the 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; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the 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 guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance:* Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

*Regarding the ICH:* Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance

harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 5, 2008 (73 FR 45463), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4A: Microbiological Examination of Non-Sterile Products: Microbial Enumeration Tests General Chapter.'' The notice gave interested persons an opportunity to submit comments by October 6, 2008.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4A: Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests General Chapter'' was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2008.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. 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. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance. 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.

## III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: March 31, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–7902 Filed 4–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–D–0400]**

### International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 4C on Microbiological Examination of Nonsterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4C: Microbiological Examination of Nonsterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Microbiological Examination of Nonsterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions.''

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the 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 guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance:* Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

*Regarding the ICH:* Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

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The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 5, 2008 (73 FR 45467), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4C: Microbiological Examination of Non-Sterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter.'' The notice gave interested persons an opportunity to submit comments by October 6, 2008.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 4C: Microbiological Examination of Nonsterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter'' was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in November 2008.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Microbiological Examination of Nonsterile Products: Acceptance Criteria for Pharmaceutical Preparations and Substances for Pharmaceutical Use General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. 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. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. 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.

## III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: March 31, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–7905 Filed 4–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration.

**[Docket No. FDA–2009–N–0167]**

### Propylthiouracyl (PTU)-Related Liver Toxicity; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a 1-day public workshop, cosponsored with the American Thyroid Association (ATA), entitled ''Propylthiouracyl (PTU)-Related Liver Toxicity.'' This public workshop is intended to provide a public forum for discussion of the clinical, scientific, and regulatory issues pertaining to PTU-induced hepatitis to seek constructive input from academia, regulatory scientists, and other interested parties on the topic of PTU-induced hepatitis. The input from this public workshop will help the ATA to develop guidelines for the management of hyperthyroidism and help inform FDA about necessary changes to prescription drug labeling for PTU.

**DATES:** This public workshop will be held on Saturday, April 18, 2009, from 8 a.m. to 3:30 p.m. However, depending on the level of public participation, the meeting may be extended or may end early. Written or electronic comments will be accepted after the workshop until June 19, 2009.

**ADDRESSES:** The public workshop will be held at the Madison Hotel at 1177 15th St., NW., Washington, DC 20005, 202–862–1600. We are opening a docket to receive your written or electronic comments. Written or electronic comments must be submitted to the docket by June 19, 2009.

Submit written comments 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*.

Comments should be identified with the docket number found in brackets in the heading of this document.

Transcripts of the workshop will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 45 days after the workshop.

**FOR FURTHER INFORMATION CONTACT:** Jeff O'Neill, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6167, Silver Spring, MD 20903, 301–796–0777, FAX: 301–847–8753, e-mail: *jeff.o'neill@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

PTU-related liver toxicity has been reported in the published literature, and while direct comparative studies to another approved anti-thyroid medication, methimazole, are lacking, case series and postmarketing adverse event reports suggest a greater risk associated with PTU than methimazole. From prescription usage data, it appears that PTU is used less frequently than methimazole with perhaps a preferential use during pregnancy because of concerns about a rare congenital defect described in case reports of methimazole use. However, some data question whether an advantage of PTU use over methimazole exists, even during pregnancy.

FDA and ATA are sponsoring this open public discussion involving academia, regulatory scientists, and other interested parties on the topic of PTU-induced hepatitis, because it is important to the health of patients with thyroid disease that the applicable scientific, clinical, and regulatory issues are raised and fully elucidated, and, to the greatest extent possible, consensus is reached.

The ATA serves clinicians, scientists, and patients to facilitate open interchange and dissemination of scientific knowledge. The workshop is intended to provide a forum for discussion of the clinical, scientific, and regulatory issues pertaining to PTU-induced hepatitis.

## II. Registration

There is no fee to attend the workshop, and attendees do not need to register. Seating will be on a first-come, first-served basis. If you need special accommodations because of disability, please contact Jeff O'Neill (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

Dated: April 2, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–7993 Filed 4–7–09; 8:45 am]

**BILLING CODE 4160–01–S**

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Notice of Meeting; Advisory Council on Blood Stem Cell Transplantation

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Notice of Meeting of the Advisory Council on Blood Stem Cell Transplantation.

**SUMMARY:** Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the fourth meeting of the Advisory Council on Blood Stem Cell Transplantation (ACBSCT), Department of Health and Human Services (HHS). The meeting will be held from approximately 8:30 a.m. to 5 p.m. on May 12, 2009, at the Bethesda North Marriott Hotel and Convention Center, 5701 Marinelli Road, Bethesda, MD 20852. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

**SUPPLEMENTARY INFORMATION:** Pursuant to Public Law 109–129, 42 U.S.C. 274k (section 379 of the Public Health Service Act, as amended), the ACBSCT was established to advise the Secretary of HHS and the Administrator, HRSA, on matters related to the activities of the C.W. Bill Young Cell Transplantation Program (Program) and the National Cord Blood Inventory (NCBI) Program. ACBSCT is composed of up to 25 members, including the Chair, serving as Special Government Employees. The current membership includes representatives of marrow donor centers and marrow transplant centers; representatives of cord blood banks and participating birthing hospitals; recipients of a bone marrow transplant; recipients of a cord blood transplant; persons who require such transplants; family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood; persons with expertise in bone marrow and cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in the social sciences; basic scientists with expertise in the biology of adult stem cells; ethicists; hematology and transfusion medicine researchers with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public.

The Council will hear reports from three ACBSCT Work Groups: Cord Blood Accreditation Organization and Recognition Process, Scientific Factors Necessary to Define a Cord Blood Unit as High Quality, and Informed Consent. The Council also will hear presentations and discussions on the following topics: recent clinical developments and current issues, adult donor recruitment: Strategies and challenges, and future council activities.

The draft meeting agenda and a registration form will be available on or about April 13, 2009, on HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/ABOUT/*

*AdvisoryCouncil/index.html.* The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234–1701 ATTN: Rebecca Pascoe. Registration can also be completed electronically at *https://www.team-psa.com/dot/spring2009/acbsct/.* Individuals without access to the Internet who wish to register may call Rebecca Pascoe with PSA at (703) 234–1747.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACBSCT Executive Secretary, Remy Aronoff, in advance of the meeting. Mr. Aronoff may be reached by telephone at 301–443–3264, e-mail: *Remy.Aronoff@hrsa.hhs.gov* or in writing at the address provided below. Management and support services for ACBSCT functions are provided by the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 12C–06, Rockville, Maryland 20857; telephone number 301–443–7577.

After the presentations and Council discussions, members of the public will have an opportunity to provide comments. Because of the Council's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACBSCT meeting. Meeting summary notes will be made available on HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/ABOUT/Advisory_Council/index.html.*

Dated: April 1, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–7964 Filed 4–7–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Office of Rural Health Policy; Notice of Meetings

*Name:* Office of Rural Health Policy, Health Resources and Services Administration (HRSA), HHS.

*Dates and Times:* April 24, 2009, 8 a.m.—3 p.m. in Albuquerque, NM. May 18, 2009, 8 a.m.—3 p.m. in Seattle, WA. June 26, 2009, 8 a.m.—3 p.m. in Omaha, NE.

*Place:* The Albuquerque Marriott, 2101 Louisiana Boulevard, NE., Albuquerque, NM 87110, Phone: 505–881–6800.

The Seattle Airport Marriott, 3201 South 176th Street, Seattle, WA 98188, Phone: 206–241–2000.

The Omaha Marriott, 10220 Regency Circle, Omaha, NE 68114, Phone: 402–399–9000.

*Status:* The meetings will be open to the public.

*Purpose:* The Office of Rural Health Policy (ORHP) will hold a series of meetings to gather information on potential definitions of the terms Frontier or Remote Areas.

Currently the most widely used definition within the Department of Health and Human Services (DHHS) requires that the population density of a county consist of six or fewer persons per square mile. The use of whole counties as the unit of measurement can lead to inclusion of large population centers in large area counties that still have a low overall population density.

Use of population density alone as a measure of remoteness is also inappropriate for islands as the population density can far exceed 6 persons per square mile even though the island is isolated and lacks access to services and resources.

ORHP has used the Rural-Urban commuting area (RUCA) codes to identify rural areas located in Metropolitan counties. Metropolitan counties are defined by the Office of Management and Budget of the White House but can contain substantial rural areas due to geographic barriers, distance or other factors. RUCAs are based on a sub-county unit, the Census Tract, and take into account population density, urbanization, and daily commuting patterns. Every Census tract is assigned a code based on these factors. While ORHP has chosen to define Metropolitan tracts with RUCA codes from 4 through 10 as ''rural'' for purposes of grant eligibility, the codes have not been used to identify ''Frontier'' or remote areas.

In order to pursue a more accurate definition of Frontier/Remote areas, ORHP has entered into agreements with L. Gary Hart and the Economic Research Service (ERS) of the US Department of Agriculture (USDA). Dr. Hart and ERS also developed the RUCAs with support from ORHP. As work on this definition proceeds ORHP will hold a series of meetings to gather information from interested parties and the public.

While a robust, quantitative definition of Frontier/Remote areas may have future programmatic uses, the immediate goal of ORHP and ERS is to make this work available for research purposes.

*For Further Information Contact:* Direct requests for additional information to Mr. Steven Hirsch, Health Resources and Services Administration, Office of Rural Health Policy, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–7322. E-mail: *shirsch@hrsa.gov.*

Dated: April 3, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–8013 Filed 4–7–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

**AGENCY:** Health Resources and Services Administration (HHS).

**ACTION:** Notice of noncompetitive transfer of Part C funds from Cathedral Healthcare System to Saint Michael's Medical Center.

**SUMMARY:** HRSA will be transferring Part C funds to Saint Michael's Medical Center as a noncompetitive replacement award in order to ensure continuity of critical HIV medical care and treatment services and to avoid a disruption of HIV clinical care to clients in Metropolitan Newark, and Essex County in New Jersey.

**SUPPLEMENTARY INFORMATION:** *Grantee of record:* Cathedral Healthcare System.

*Intended recipient of the award:* Saint Michael's Medical Center, Newark, New Jersey.

*Amount of the award:* $537,607 to ensure ongoing clinical services to the target population.

**Authority:** Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51.

*CFDA Number:* 93.918.

*Project period:* April 1, 2005 to March 31, 2010. The period of support for the replacement award is from April 1, 2009 to March 31, 2010.

*Justification for the Exception to Competition:* Critical funding for HIV medical care and treatment services to clients in Metropolitan Newark and Essex County in New Jersey will be continued through a noncompetitive supplement to Saint Michael's Medical Center, a prior sub-contractor of Cathedral Healthcare System, the grantee of record in Newark, New Jersey. This is a temporary replacement award as the previous grant recipient serving this population notified HRSA that they will not continue providing services after March 31, 2009. The Cathedral Healthcare System, the former grantee, has ceased governance and operations of its three hospitals. Saint Michael's Medical Center is the best qualified recipient for this supplement, as it already serves most of the former grantee's patients ensuring continuity of care, and can continue to provide critical services with the least amount of disruption to the service population while the service area is re-competed.

This supplement will cover the time period from April 1, 2009, through

March 31, 2010. This service area will be included in the upcoming competition for the Part C HIV Early Intervention Services for project periods starting April 2010.

**FOR FURTHER INFORMATION CONTACT:** Maria C. Rios, via e-mail *mrios@hrsa.gov*, or via telephone, 301–443–0493.

Dated: April 2, 2009.

**Marcia K. Brand,**

*Acting Deputy Administrator.*

[FR Doc. E9–7963 Filed 4–7–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Substituted Triazine and Purine Compounds for the Treatment of Chagas Disease and African Trypanosomiasis**

*Description of Invention:* Parasitic protozoa are responsible for a wide variety of infections in both humans and animals. Trypanosomiasis poses health risks to millions of people across multiple countries in Africa and North and South America. Visitors to these regions, such as business travelers and tourists, are also at risk for contracting parasitic diseases. There are two types of African trypanosomiasis, also known as sleeping sickness. One type is caused by the parasite Trypanosoma brucei gambiense, and the other is caused by the parasite Trypanosoma brucei rhodesiensi. If left untreated, African sleeping sickness results in death. Chagas disease, caused by *Trypanosoma cruzi* (*T. cruzi*), affects millions of people in Mexico and South and Central America. Untreated, Chagas disease causes decreased life expectancy and can also result in death.

The subject invention provides for novel triazine and purine compounds that are useful for the treatment and prevention of mammalian protozoal diseases, including African trypanosomiasis, Chagas disease and other opportunistic infections. The compounds can inhibit the cysteine proteases rhodesain found in the parasites that cause African trypanosomiasis and cruzain found in *T. cruzi*. The invention includes composition claims for the novel triazine and purine compounds, methods for inhibiting cruzain or rhodesain in a subject, and methods for treating subjects suffering from African trypanosomiasis or Chagas disease.

*Applications:* Prophylactic and therapeutic treatment of African trypanosomiasis and Chagas disease.

*Advantages:* Novel compounds against the cysteine proteases, cruzain and rhodesain; Compounds possess low nanomolar inhibitory potential against cruzain and rhodesain.

*Development Status: In vitro* and *in vivo* data are available upon request and upon execution of an appropriate confidentiality agreement.

*Inventors:* Craig J. Thomas et al. (NHGRI).

*Patent Status:* U.S. Provisional Application No. 61/199,763 filed 19 Nov 2008 (HHS Reference No. E–267–2008/0–US–01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

*Collaborative Research Opportunity:* The NIH Chemical Genomics Center (NCGC) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize appropriate lead compounds described in U.S. Provisional Application No. 61/199,763. Please contact Dr. Craig J. Thomas (*craigt@nhgri.nih.gov*) or Claire Driscoll (*cdriscol@mail.nih.gov*), Director of the NHGRI Technology Transfer Office, for more information.

**Improved Expression Vectors for Mammalian Use**

*Description of Invention:* This technology relates to improving levels of gene expression using a combination of a constitutive RNA transport element (CTE) with a mutant form of another RNA transport element (RTE). The combination of these elements results in a synergistic effect on stability of mRNA transcripts, which in turn leads to increased expression levels. Using HIV–1 gag as reporter mRNA, one mutated RTE in combination with a CTE was found to improve expression of unstable mRNA by about 500-fold. Similarly this combination of elements led to synergistically elevated levels of HIV–1 Env expression. The function of CTEs and RTEs is conserved in mammalian cells, so this technology is a simple and useful way of obtaining high levels of expression of otherwise poorly expressed genes and can be used in a number of applications such as but not limited to improvements of gene therapy vectors, expression vectors for mammalian cells.

*Applications:* Gene therapy; DNA vaccines; Protein expression.

*Development Status: In vitro* data available.

*Inventor:* Barbara K. Felber et al. (NCI).

*Patent Status:* U.S. Utility Application No. 10/557,129 filed 16 Nov 2005, from PCT Application No. PCT/US04/15776 filed 19 May 2004, which published as WO 2004/113547 on 29 Dec 2004 (HHS Reference No. E–223–2003/1–US–03).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Cancer Institute Vaccine Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: April 1, 2009.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E9–7883 Filed 4–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council.

*Date:* May 13, 2009.

*Open:* 8:30 a.m. to 11:45 a.m.

*Agenda:* To present the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 4:10 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892. (301) 594–8843. *stanfibr@niddk.nih.gov*.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council. Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

*Date:* May 13, 2009.

*Open:* 1 p.m. to 2:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892. (301) 594–8843. *stanfibr@niddk.nih.gov*.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council. Digestive Diseases and Nutrition Subcommittee.

*Date:* May 13, 2009.

*Open:* 1 p.m. to 2:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892. (301) 594–8843. *stanfibr@niddk.nih.gov*.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council. Kidney, Urologic, and Hematologic Diseases Subcommittee.

*Date:* May 13, 2009.

*Open:* 1 p.m. to 2:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892. (301) 594–8843. *stanfibr@niddk.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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 1, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–7910 Filed 4–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Allergy and Infectious Diseases Special Emphasis Panel. NIH Support for Conferences and Scientific Meetings.

*Date:* April 28, 2009.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

*Contact Person:* Eugene R. Baizman, PhD, Scientific Review Officer, DHHS/NIAID/DEA/SRP, 6700B Rockledge Drive, Room 3125, Bethesda, MD 20892–7616. 301–402–1464. *ebaizman@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 1, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–7912 Filed 4–7–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–612, Extension of an Existing Information Collection; Comment Request

**ACTION:** 30-day notice of information collection under review: Form I–612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; OMB Control No: 1615–0030.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 26, 2009, at 74 FR 4446, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 8, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0030 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of This Information Collection:*

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I–612. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as Brief Abstract: Primary:* Individuals or households. This form will be used by USCIS to determine eligibility for a waiver.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 1,300 responses at 20 minutes (.333) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 433 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW.,Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: April 2, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E9–7874 Filed 4–7–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–905, Extension of an Existing Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–905, Application for Authorization to Issue Certification for Health Care Workers and Related Requirement; OMB Control No: 1615–0086.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 26, 2009, at 74 FR 4447, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 8, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0086 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of This Information Collection:*

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Authorization to Issue Certification for Health Care Workers and Related Requirements.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I–905. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as Brief Abstract: Primary:* Individuals or households. This form will be used by USCIS to permit an organization to apply for authorization to issue certificates to health care workers.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:*

*Request To Issue Certificates:* 10 responses at 4 hours per response.

*Credential Organization:* 14, 000 responses at 2 hours per response.

*Applications:* 14,000 responses at 1 hour and 40 minutes (1.66) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 51,280 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: April 2, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E9–7876 Filed 4–7–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Compliance Review Worksheet; New Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Compliance Review Worksheet.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 8, 2009.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security, USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*.

When submitting comments by e-mail please make sure to add OMB–51 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Overview of This Information Collection:*

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Compliance Review Worksheet.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* No form number. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract: Primary:* Business. The Compliance Review Worksheet will be used by USCIS to record the results of on-site inspections.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 25,000 responses at 30 minutes (.50) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 12,500 annual burden hours.

If you need a copy of the supporting statement, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.* USCIS has requested and OMB has agreed to not display the information collection for public view as required under 5 CFR 1320.14.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: April 3, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E9–7917 Filed 4–7–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Survey of Recently Naturalized Citizens; New Information Collection; Comment Request

**ACTION:** 60-day notice of information collection under review: survey of recently naturalized citizens.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 8, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, add the USCIS File Number (OMB–52) in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Overview of This Information Collection:*

(1) *Type of Information Collection:* New Information collection.

(2) *Title of the Form/Collection:* Survey of Recently Naturalized Citizens.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* No agency form number; File No. OMB–52. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract: Primary:* Individuals or households. USCIS will use this survey to collect data from recently naturalized citizens to help predict future naturalization trends.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 7,500 responses (introductory call), one response per respondent, at one (.0333) 2 minutes per response. 5,000 responses (questionnaire), one response per respondent at (0.416) 25 minutes per response.

*An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 2,316 annual burden hours.

If you need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: April 3, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.*

[FR Doc. E9–7918 Filed 4–7–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5281–N–26]**

### Training Evaluation Form

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Training Evaluation Form will be used by HUD to determine how training provided to public housing agencies and the public can be improved. The completion of the form will be voluntary.

**DATES:** *Comments Due Date:* May 8, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–Pend) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Training Evaluation Form.

*OMB Approval Number:* 2577–Pend.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:* The Training Evaluation Form will be used by HUD to determine how training provided to public housing agencies and the public can be improved. The completion of the form will be voluntary.

*Frequency of Submission:* On occasion, Other When training is completed.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting burden | 29,288 | 1 | | 0.329 | | 966 |

*Total Estimated Burden Hours:* 966.

*Status:* New Collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 1, 2009.

**Lillian Deitzer,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. E9–7888 Filed 4–7–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R6–ES–2009–N0047; 60120–1113–0000–D2]**

## Endangered and Threatened Wildlife and Plants; Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permits.

**SUMMARY:** We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

**DATES:** Written comments on this request for a permit must be received by May 8, 2009.

**ADDRESSES:** Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile (303) 236–0027.

**SUPPLEMENTARY INFORMATION:**

### Public Availability of Comments

Before including your address, telephone number, e-mail address, or other personal indentifying 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.

### Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (Act; 5 U.S.C. 552A) and Freedom of Information Act (Act; 5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen (*see* **ADDRESSES**), by mail or by telephone at (303) 236–4256. All comments received from individuals become part of the official public record.

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*).

### Applications

*Applicant:* Chris Mammoliti, Topeka, Kansas, TE–087666. The applicant requests a renewed permit to take Topeka shiner (*Notropis topeka*) and American burying beetle (*Nicrophorus americanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Scott Campbell, University of Kansas, Kansas Biological Survey, Lawrence, Kansas, TE–038527. The applicant requests a renewed permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Brad Petch, Colorado Division of Wildlife, Meeker, Colorado, TE–080990. The applicant requests a renewed permit to take black-footed ferret (*Mustela nigripes*) and Colorado pikeminnow (*Ptychocheilus lucius*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Jerald Powell, Wildlife Specialties, Lyons, Colorado, TE–080647. The applicant requests a renewed permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Ron Merritt, Roosevelt Park Zoo, Minot, North Dakota, TE–091150. The applicant requests a renewed permit to display pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Cody Wilson, U.S. Army Corps of Engineers, Pickstown, South Dakota, TE–094832. The applicant requests a renewed permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Michael Smith, Colorado Division of Wildlife, Lamar, Colorado, TE–083415. The applicant requests a renewed permit to take interior least tern (*Sterna antillarum athalassos*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Stephanie Jones, U.S. Fish and Wildlife Service, Denver, Colorado, TE–047917. The applicant requests a renewed permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Jesse Wilkens, Huron, South Dakota, TE–207949. The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* C. Alex Buerkle, University of Wyoming, Laramie, Wyoming, TE–207945. The applicant requests a permit to remove and reduce to possession Penstemon penlandii (*Penland beardtongue*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant:* Timothy Griffin, U.S. Forest Service, Nebraska National Forest, Halsey, Nebraska, TE–131639. The applicant requests a permit amendment to remove and reduce to possession Penstemon haydenii (*Blowout penstemon*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: March 25, 2009.

**Noreen E. Walsh,**

*Acting Regional Director, Denver, Colorado.*

[FR Doc. E9–7944 Filed 4–7–09; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2009–N0041; 40136–1265–0000–S3]**

### St. Vincent National Wildlife Refuge, Franklin and Gulf Counties, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for St. Vincent National Wildlife Refuge (NWR). We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

**DATES:** To ensure consideration, we must receive your written comments by May 8, 2009. Special mailings, newspaper articles, and other media announcements will be used to inform the public and State and local government agencies of the opportunities for input throughout the planning process. A public scoping meeting will be held early in the CCP development process. The date, time, and place for the meeting will be announced in the local media.

**ADDRESSES:** Send comments, questions, and requests for information to: Monica Harris, Natural Resource Planner, St. Vincent NWR, P.O. Box 447, Apalachicola, FL 32329.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica Harris, Natural Resource Planner; telephone: 910/378–6689; e-mail: *monica_harris@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

With this notice, we initiate our process for developing a CCP for St. Vincent NWR in Franklin and Gulf Counties, Florida. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

#### Background

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of St. Vincent NWR.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

St. Vincent NWR, which encompasses 12,490 acres, was established in 1968 as a waterfowl sanctuary. The primary feature of the refuge is the 4-mile-wide, 9-mile-long, 12,358-acre barrier island known as St. Vincent Island. In addition, the refuge includes a 46-acre island known as Pig Island in St. Joseph Bay, as well as an 86-acre mainland tract of land known as 14-mile site, south of County Road 30A. Management activities focus on managing and conserving the natural barrier island and associated native plant and animal communities. St. Vincent NWR provides habitat for numerous fresh and marine water species and thousands of birds, including wading and water birds (*e.g.*, herons, egrets, and wood storks), as well as shorebirds (*e.g.*, snowy plovers, American oystercatchers, and red knots). Many neotropical migratory songbirds breed on the refuge and use it during migration. Since 1990, the refuge has supported the recovery of the endangered red wolf by providing St. Vincent Island as a propagation site. Other species, including deer, squirrel, raccoon, alligator, snake, and sea turtle, can be found on the refuge.

#### Public Availability and Comments

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.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 12, 2009.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E9–7937 Filed 4–7–09; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

### Agency Information Collection Activity; Mineral Resources External Research Program (MRERP)

**AGENCY:** U.S. Geological Survey (USGS), Interior.

**ACTION:** Notice of a new information collection.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB a new information collection request (ICR) for approval of the paperwork requirements for the Mineral Resources Program's (MRP) Mineral Resources External Research Program (MRERP). To submit a proposal for the MRERP, a project narrative must be completed and submitted via *http://Grants.gov*. For multi-year projects, an annual progress report must be completed for all projects; a final technical report is required at the end of the project period. This notice provides the public an opportunity to comment on the paperwork burden of these project narrative and report requirements. The narrative and report guidance is available at *http://www.usgs.gov/contracts/Minerals/index.html*.

**DATES:** You must submit comments on or before May 8, 2009.

**ADDRESSES:** Please submit comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail *OIRA_DOCKET@omb.eop.gov*; or fax (202) 395–5806; and identify your submission as 1028–NEW. Please also submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); *or pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, MRERP in the subject line.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Jeff L. Doebrich by mail at U.S. Geological Survey, 913 National Center, Sunrise Valley Drive, Reston, VA 20192 or by telephone at 703–648–6103.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Through the MRERP, the MRP of the USGS offers an annual competitive grant and/or cooperative agreement opportunity to individuals, universities, State agencies, Tribal governments or organizations, and industry or other private sector organizations. Applicants must have the ability to conduct research in topics related to non-fuel mineral resources that meet the goals of the MRP. We will consider all research-based proposals that address one of the MRP's long-term goals. The long-term goals of the MRP, as described in its Five-Year Plan for FY 2006–2010 (*http://minerals.usgs.gov/plan/2006-2010/2006-2010_plan.html*), are to ensure availability of: (1) Up-to-date quantitative assessments of potential for undiscovered mineral deposits, (2) up-to-date geoenvironmental assessments of priority Federal lands, (3) reliable geologic, geochemical, geophysical, and mineral locality data for the United States, and (4) long-term data sets describing mineral production and consumption. Annual research priorities are provided as guidance for applicants to consider when submitting proposals. Annual research priorities are determined by USGS MRP management. Since the initiation of MRERP 2004, we have awarded more than $1.8 million to 30 different research projects across the country.

#### II. Data

*OMB Control Number:* None: This is an existing collection without an OMB control number.

*Title:* Mineral Resources External Research Program (MRERP).

*Respondent Obligation:* Required to obtain or retain benefits.

*Frequency of Collection:* Annually.

*Estimated Number and Description of Respondents:* 35. Individuals, universities, State agencies, Tribal governments or organizations, and industry or other private sector organizations.

*Estimated Number of Annual Responses:* 40 (35 applications and 5 reports per year).

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 3,060. We expect to receive approximately 35 applications, each taking 81 hours to complete. This includes the time for project conception and development, proposal writing and reviewing, and submitting project narrative through Grants.gov, (2,835 burden hours). We anticipate awarding an average of 5 grants per year. Each grant recipient must complete and submit a final report. We estimate 45 hours to complete a report (totaling 225 hours).

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* There are no ''non-hour cost'' burdens associated with this collection of information.

#### III. Request for Comments

We invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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: April 2, 2009.

**Kathleen Johnson,**

*Program Coordinator, Mineral Resources External Research Program.*

[FR Doc. E9–7924 Filed 4–7–09; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

### Agency Information Collection Activities: National Geological and Geophysical Data Preservation Program (NGGDPP)

**AGENCY:** U.S. Geological Survey (USGS).

**ACTION:** Notice of a new information collection.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) a new information collection request (ICR) for approval of the paperwork requirements for the National Geological and Geophysical Data Preservation Program (NGGDPP). This notice provides the public an opportunity to comment on the paperwork burden of the project

narrative and report requirements discussed below.

**DATES:** You must submit comments on or before May 8, 2009.

**ADDRESSES:** Please submit comments on this information collection directly to the Office of Management and Budget Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via e-mail [*OIRA_DOCKET@omb.eop.gov*] or fax 202–395–5806; and identify your submission as 1028–NEW. Please also submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970)226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, NGGDPP in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Frances W. Pierce at (703) 648–6636 or by mail at U.S. Geological Survey, 912 National Center, Sunrise Valley Drive, Reston, VA 20192.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding under the NGGDPP. We will accept proposals from State geological surveys requesting funds to inventory and assess the condition of current collections and data preservation needs. Financial assistance will be awarded annually on a competitive basis following the evaluation and ranking of State proposals by a review panel composed of representatives from the Department of the Interior, State geological surveys, academic institutions, and the private sector. To submit a proposal, you must complete a project narrative and submit the application via *Grants.gov*. Grant recipients must complete a final technical report at the end of the project period. Narrative and report guidance is available through *http://datapreservation.usgs.gov/* and at *http://www.Grants.gov*.

**II. Data**

*OMB Control Number:* None. This is a new collection.

*Title:* National Geological and Geophysical Data Preservation Program (NGGDPP).

*Respondent Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually.

*Estimated Number and Description of Respondents:* 62 State Geological Surveys.

*Estimated Number of Annual Responses:* 62 (34 applications and 28 reports).

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 1,232 hours. We expect to receive approximately 34 applications. It takes each applicant approximately 35 hours to complete the narrative and to present supporting documents. This includes the time for project conception and development, proposal writing and reviewing, and submitting the proposal application through *Grants.gov* (totaling 1,190 burden hours). We anticipate awarding 28 grants per year. The award recipients must submit a final report. We estimate that it will take approximately 1.5 hours to complete the requirement for the reports (totaling 42 hours).

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* There are no ''non-hour cost'' burdens associated with this collection of information.

**III. Request for Comments**

On September 15, 2008, we published a **Federal Register** notice (73 FR 53265) announcing that we would submit this information collection to OMB for approval. The notice provided a 60-day public comment period ending on November 14, 2008. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 anytime. 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: April 2, 2009.

**Frances Pierce,**

*Acting Program Coordinator, National Geological and Geophysical Data Preservation.*

[FR Doc. E9–7928 Filed 4–7–09; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Agency Information Collection Activity; Evaluation of USGS Southwest Biological Science Center Biennial Conferences

**AGENCY:** U.S. Geological Survey (USGS).

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

**SUMMARY:** We (U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** You must submit comments on or before June 8, 2009.

**ADDRESSES:** Please submit your comments on the IC to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *phadrea_ponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, Conference Evaluation in the subject line.

**FOR FURTHER INFORMATION PLEASE CONTACT:** To request additional information about this IC, contact Dr. Marty Lee by e-mail at *martha.lee@nau.edu* or by telephone at (928) 523–6644.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Natural area conferences aim to promote discussion and productive communication between researchers and land resource managers. This research is designed to measure the effectiveness of these conferences using importance/performance analysis to identify a set of standards that define an effective conference. An on-line survey will be sent to approximately 550 attendees of two USGS-sponsored conferences. Results will provide quantitative knowledge that will

ultimately enhance the experience for future conference attendees and inform the supporting institutions and/or agencies of their success. These data will also serve as a measurement tool and point of reference from which to evaluate future conferences.

**II. Data**

*OMB Control Number:* None. This is a new collection.

*Title:* Evaluation of USGS Southwest Biological Science Center Biennial Conferences.

*Type of Request:* New.

*Affected Public:* Individuals, State agencies and tribal governments.

*Respondent Obligation:* Voluntary.

*Frequency of Collection:* Biannually.

*Estimated Number and Description of Respondents:* 550 conference attendees.

*Estimated Number of Annual Responses:* 1100.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 275 hours.

**III. Request for Comments**

We invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 publically available at anytime. 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.

*USGS Information Collection Clearance Officer:* Phadrea D. Ponds 970–226–9445.

Dated: April 1, 2009.

**Charles van Riper,**

*Leader, USGS Southwest Biological Science Center, Sonoran Desert Research Station.*

[FR Doc. E9–7930 Filed 4–7–09; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

### National Geospatial Advisory Committee; Meeting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Geospatial Advisory Committee (NGAC) will meet on May 12–13, 2009 at the George Washington University Cafritz Conference Center, 800 21st Street, NW., Washington, DC 20052. The meeting will be held in room 405.

The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Current FGDC Activities.
—National Geospatial Policy and Strategy.
—NGAC Subcommittee Activities, including The National Map, Partnerships, Parcel Data, Communications, Economic Recovery, and Governance.
—NGAC Action Plan.

The meeting will include an opportunity for public comment during the morning of May 13. Comments may also be submitted to the NGAC in writing.

Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the U.S. Geological Survey (703–648–6283, *amaher@usgs.gov*). Registrations are due by May 8, 2009. While the meeting will be open to the public, seating may be limited due to room capacity.

**DATES:** The meeting will be held from 8:30 a.m. to 5 p.m. on May 12 and from 8 a.m. to 4:30 p.m. on May 13.

**FOR FURTHER INFORMATION CONTACT:** John Mahoney, U.S. Geological Survey (206–220–4621).

**SUPPLEMENTARY INFORMATION:** Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *http://www.fgdc.gov/ngac*.

Dated: April 1, 2009.

**Ken Shaffer,**

*Deputy Staff Director, Federal Geographic Data Committee.*

[FR Doc. E9–7927 Filed 4–7–09; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Designation of Potential Wilderness as Wilderness, Great Sand Dunes National Park and Preserve, CO

**AGENCY:** National Park Service, Department of the Interior.

**SUMMARY:** The Great Sand Dunes Wilderness within Great Sand Dunes National Monument was designated by Public Law 94–567, dated Oct 20th, 1976. According to the act the wilderness was to comprise 33,450 acres with a potential wilderness addition of 670 acres. Public Law 95–625, dated Nov 10th, 1978 added 1,109 acres to Great Sand Dunes National Monument and Public Law 96–87, dated Oct 12th, 1979, amended this addition to 1,900 acres and further added that ''The Secretary shall designate the lands described by this paragraph for management in accordance with the adjacent lands within the monument * * *.'' This amendment, therefore, has the effect of authorizing inclusion of the 1,900 acres in the wilderness area. At the time the Acts were approved the added lands had non-conforming uses prohibited by the Wilderness Act of 1964 and so were designated as potential wilderness until such time as the non-conforming uses were eliminated.

The National Park Service depicted the wilderness and potential wilderness additions on maps entitled ''Great Sand Dunes Wilderness, Great Sand Dunes National Monument, Colorado'', numbered 140–20,006–D and dated January, 1980. In May, 1980, the NPS published the legal description of the wilderness and potential wilderness additions. The maps and legal description are on file at the headquarters of Great Sand Dunes National Park and Preserve, 11500 Highway 150, Mosca, CO 81144.

At the time of the establishment of the wilderness area two of the potential wilderness units had been purchased by the government but had non-conforming uses which precluded them from being included in the original wilderness

declaration. One was occupied by the previous owner under a ''Life Estate Agreement'' while the other was occupied under a ''Use and Occupancy'' agreement. The former expired upon the death of the occupant in 1995 while the latter's term expired in 1999. Subsequently each unit reverted to the exclusive control of the government and the non-conforming uses were eliminated. Additionally, improvements existing on one of the units were removed and the area restored to a natural state.

The other two units were privately held, accessible by motor vehicle, and with potential further development. One 40 acre tract was purchased in 2000 and the remaining lands purchased in 2004. Subsequently, the government holds all rights and privileges to the land including mineral rights (which never passed from the government in the first place).

Note that Public Law 106–530, dated Nov 22, 2000, abolished Great Sand Dunes National Monument and instead established Great Sand Dunes National Park and Preserve. The potential wilderness lands hereby designated as wilderness total 2,505 acres more or less and are described as:

**Sixth Principal Meridian**

T. 25 S., R. 73 W.,
Section 31, surveyed, that portion of Segregated Tract 39 in the N½ according to Government Independent Resurvey approved October 7, 1943;
Section 32, surveyed, that portion of Segregated Tract 39 in the W½ NW¼ NE¼, N½ NW¼, and W½ SW¼ NW¼ according to Government Independent Resurvey approved October 7, 1943.
T. 26 S., R. 73 W.,
Section 11, surveyed, those portions of E½ lying northwesterly beyond 50 feet of the centerline of that portion of the Medano Pass Primitive Road northeasterly of Little Medano Road, northwesterly of the center of that portion of the intermittent stream leading into Medano Creek southwesterly of said Little Medano Road and northerly of the center of that portion of Medano Creek below the confluence thereof with said intermittent stream and excluding in said E½ a strip of land 50 feet on each side of the centerline of said Little Medano Road;
Section 14, surveyed, that portion of E½ W½ lying west of the center of Medano Creek;
Section 23, surveyed, that portion of W½ NW¼ lying west of the center of Medano Creek;

**New Mexico Principal Meridian**

That southeasterly portion of the former Luis Maria Baca No. 4 Grant lying within the authorized boundaries of the former Great Sand Dunes National Monument in Saguache County.

**FOR FURTHER INFORMATION CONTACT:** Jim Bowman, Chief Ranger, Great Sand Dunes National Park and Preserve, 11500 Highway 150, Mosca, CO 81146, (719) 378–6321, *jim_bowman@nps.gov*.

Dated: February 4, 2009.

**Michael D. Snyder,**

*Director Intermountain Region, National Park Service.*

[FR Doc. E9–7936 Filed 4–7–09; 8:45 am]

**BILLING CODE 4312–CL–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Environmental Impact Statement/ General Management Plan; Channel Islands National Park, Ventura County, California; Notice of Intent To Expand Scope of the Environmental Impact Statement

**SUMMARY:** Pursuant to section 102(C) of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321, et seq.), and in accord with Council on Environmental Quality (CEQ) regulations including 40 CFR 1501.7, the National Park Service is expanding the scope of the Environmental Impact Statement (EIS) which is being prepared for the General Management Plan (GMP) for Channel Islands National Park. As part of this conservation planning effort, the EIS will include a wilderness study to determine if any portions of the park should be recommended for inclusion in the National Wilderness Preservation System as defined in the Wilderness Act of 1964. This new element will be included as part of the EIS currently in preparation. Accordingly this notice supplements and updates the original Notice of Intent published with regard to initiation of the GMP project in the **Federal Register** on November 8, 2001. As a result, the scope of the EIS will be expanded to include an evaluation of foreseeable effects associated with possible designation of wilderness within the park.

As noted previously, the GMP will establish the overall direction for the park, setting broad management goals for managing the area over the next 15 to 20 years. The GMP will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the park. Based on the desired conditions, the GMP will outline what resource management and visitor activities, and what limited developments, that would be appropriate in the park. Among the topics that have been addressed thus far are ecosystem management, preservation of natural and cultural resources, landscape restoration, island access, road and trail systems, facility and staff needs, research needs, and education and interpretive efforts. A range of reasonable alternatives for managing the park, including ''no-action'' and ''preferred'' alternatives, will be developed through the planning process and included in the EIS. The EIS will evaluate the potential environmental consequences of all alternatives, and identify appropriate mitigation strategies. An ''environmentally preferred'' alternative will be identified, and any potential for unacceptable impacts or impairments to park values will also be disclosed.

*Scoping Process:* To facilitate full and complete conservation planning and analysis of environmental impact, the National Park Service (NPS) is gathering information relevant to the GMP/ Wilderness Study and the associated EIS, and is obtaining new suggestions and relevant information from the public on the scope of issues to be addressed (comments previously provided to the planning team need not be re-submitted). In concert with local, state, tribal, and other federal agencies, consideration will also be made for cooperative management of resources outside park boundaries that affect the integrity of the park. Comments and participation in this final phase of the scoping process are encouraged. Persons not previously participating and now wishing to provide relevant information or comment about issues or concerns may do so as follows: written comments may be sent via regular mail to Channel Islands NP Planning Team, NPS–Denver Service Center, P.O. Box 25287, Denver, Colorado 80225 (or transmitted via the Internet at *http://parkplanning.nps.gov*). They may express their concerns at public meetings to be held in Santa Barbara and Ventura (to be scheduled during spring-summer, 2009). Finally, they may hand-deliver written comments to the park headquarters in Ventura, California. 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.

**DATES:** All written comments on the scope of the GMP/Wilderness Study/EIS must be postmarked, hand delivered, or electronically transmitted August 6,

2009. An update will also be posted on the project Web site.

**SUPPLEMENTARY INFORMATION:** As noted above, persons who previously submitted comments on the proposed GMP need not resubmit those comments. The NPS already is considering that input as planning continues. However, persons who have not previously submitted comments on the scope of the EIS, or who wish to submit additional comments related to consideration of the Wilderness Study are encouraged to do so.

Previously three public scoping sessions were held at Ventura, Santa Barbara, and Los Angeles during the week of November 12, 2001. Additional public meetings will be held during spring-summer, 2009, in Santa Barbara and Ventura to address the new wilderness study and to provide a GMP project update (a summary of all scoping results will also be available). The confirmed dates, times and locations of these meetings will be posted on the park's web site, announced via local and regional news media, or may be obtained by telephone at (805) 658–5730.

The conservation planning and environmental impact analysis supporting preparation of the GMP/Wilderness Study will be conducted as noted above in accord with requirements of NEPA, CEQ and other appropriate Federal regulations, and NPS Director's Order 12, Director's Order 41, and other NPS procedures and policies. For further information, please contact the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001–4354; telephone (805) 658–5730. General information about Channel Islands National Park is available on the Internet at *http://www.nps.gov/chis*.

*Decision Process:* Following final completion of the scoping phase and consideration of all public concerns and other agency comments, a Draft EIS and proposed GMP will be prepared and released for public review. The subsequent availability of the Draft EIS/GMP will be announced by **Federal Register** notice and in local and regional news media. As a delegated EIS, the official responsible for the final decision on the GMP is the Regional Director, Pacific West Region, National Park Service. Following approval of the GMP the official responsible for implementation will be the Superintendent, Channel Islands National Park.

Dated: February 19, 2009.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. E9–7921 Filed 4–7–09; 8:45 am]

**BILLING CODE**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Monocacy National Battlefield, Maryland

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice of Availability, Draft Environmental Impact Statement for the General Management Plan, Monocacy National Battlefield.

**SUMMARY:** The National Park Service announces the availability of the Draft Environmental Impact Statement for the General Management Plan for Monocacy National Battlefield, Maryland. This document will be available for public review and comment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and National Park Service policy.

**DATES:** A 60-day public comment period will begin with the Environmental Protection Agency's publication of its notice of availability in the **Federal Register**.

**ADDRESSES:** Copies of the Draft Environmental Impact Statement and the General Management Plan are available at Monocacy National Battlefield, 4801 Urbana Pike, Frederick, Maryland 21701. An electronic copy of the DEIS and GMP is also available on the National Park Service Web site at *http://parkplanning.nps.gov/mono*.

**FOR FURTHER INFORMATION CONTACT:** Susan Trail, Superintendent, Monocacy National Battlefield, at 4801 Urbana Pike, Frederick, Maryland 21701, and by telephone at (301) 694–3147. The responsible official for the Draft Environmental Impact Statement is Margaret O'Dell, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

**SUPPLEMENTARY INFORMATION:** The document provides a framework for management, use, and development options for Monocacy National Battlefield by the National Park Service for the next 15 to 20 years. The document describes four management alternatives for consideration, including a no-action alternative, and analyzes the environmental impacts of those alternatives for all units of Monocacy National Battlefield.

Alternative 4, the preferred alternative, would move park administration into the Thomas House and maintenance would continue at the Gambrill Mill site. Visitors would transit the battlefield in their automobiles. All historic structures would be preserved with exhibits in the Worthington House and Thomas outbuilding. New trails would be constructed and commemorative memorial locations would be upgraded. A pedestrian-only deck would be constructed over Interstate 270 between the Worthington and Thomas farms.

The public is welcome to comment on the draft plan at *http://parkplanning.nps.gov/mono* or by mail at Monocacy National Battlefield, 4801 Urbana Pike, Frederick, Maryland 21701.

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: January 14, 2009.

**Margaret O'Dell,**

*Regional Director, National Capital Region.*

[FR Doc. E9–7951 Filed 4–7–09; 8:45 am]

**BILLING CODE 4312–57–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Cle Elum Dam Fish Passage Facilities and Fish Re-Introduction Project; Kittitas County, WA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare an Environmental Impact Statement (EIS) on the Cle Elum Dam Fish Passage Facilities and Fish Re-Introduction Project. The Washington State Department of Ecology (Ecology) will be a joint lead with Reclamation in the preparation of this EIS, which will also be used to comply with requirements of the Washington State Environmental Policy Act (SEPA).

Reclamation is evaluating the construction of downstream juvenile

fish passage and upstream adult fish passage alternatives at the dam for the Cle Elum Dam Fish Passage Facilities Project. Cle Elum Dam did not include fish passage facilities when constructed in 1933; consequently, fish passage to upstream habitat for fish species was blocked.

As part of the effort to restore fish above Cle Elum Dam, the Washington Department of Fish and Wildlife (WDFW), in collaboration with Yakama Nation, is evaluating the implementation of a proposed fish re-introduction project for populations above the dam. The re-introduction project would involve the use of hatchery supplementation techniques to restore fish above the dam.

Early in 2001, Yakima River basin interest groups urged Reclamation to incorporate fish passage facilities as part of the reconstruction of Keechelus Dam under the Safety of Dams (SOD) program. Reclamation determined that fish passage facilities could not be added under existing SOD authority. However, in the January 2002 Record of Decision (ROD) for Keechelus Dam Modification EIS (Reclamation 2002), Reclamation committed to seek funding under existing authorities to conduct a feasibility study for providing fish passage at all Yakima Project storage dams. Additionally, Reclamation agreed to mitigation agreement terms and Hydraulic Project Approval (HPA) conditions with WDFW to investigate fish passage feasibility. In 2003, Reclamation prevailed in a suit filed by the Yakama Nation concerning the NEPA and Endangered Species Act compliance for the Keechelus SOD project. The Yakama Nation then appealed that decision to the 9th Circuit Court of Appeals. In 2006, Reclamation and the Yakama Nation entered into a settlement agreement to resolve litigation in which the parties agreed to collaborate to prepare technical plans and a planning report for fish passage at Cle Elum and Bumping Lake Dams. This EIS is part of the agreed-upon planning process for Cle Elum Dam only. An EIS for Bumping Lake fish passage will be prepared separately at a future time.

**DATES:** A scoping meeting will be held on April 30, 2009, from 5:30 to 7:30 p.m. at the location indicated under the **ADDRESSES** section. Written comments will be accepted through May 8, 2009, for inclusion in the scoping summary document. Requests for sign language interpretation for the hearing impaired or other special assistance needs should be submitted to David Kaumheimer, Environmental Program Manager, as indicated under the **FOR FURTHER INFORMATION** section by April 16, 2009.

**ADDRESSES:** Comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Upper Columbia Area Office, Attention: David Kaumheimer, Environmental Program Manager, 1917 Marsh Road, Yakima, Washington 98901.

The scoping meeting will be held at the Hal Holmes Center, 209 N. Ruby Street, Ellensburg, WA 98926. The meeting facility is physically accessible to people with disabilities.

**FOR FURTHER INFORMATION:** Contact David Kaumheimer, Environmental Program Manager, Telephone (509) 575–5848, ext. 232. TTY users may dial 711 to obtain a toll-free TTY relay. Information on this project can also be found at *http://www.usbr.gov/pn/programs/ucao_misc/fishpassage/.*

**SUPPLEMENTARY INFORMATION:** The Yakima Project Storage Dams Fish Passage Study is conducted under the authority of the Act of December 28, 1979 (93 Stat. 1241, Pub. L. 96–162, Feasibility Study—Yakima River Basin Water Enhancement Project). Section 1205 of Title XII of the Yakima River Basin Water Enhancement Project Act of October 31, 1994 (Pub. L. 103–434, as amended, 108 Stat. 4550) authorized fish, wildlife, and recreation as additional purposes of the Yakima Project. Section 1206 of Title XII of this Act authorizes Reclamation to construct juvenile (*i.e.*, downstream) fish passage facilities at Cle Elum Dam under a cost ceiling. Section 109 of the Hoover Power Plant Act of August 17, 1984 (Pub. L. 98–381, 98 Stat. 1340), authorizes Reclamation to design, construct, and operate fish passage facilities within the Yakima River basin that is in accordance with the NPCC's Columbia River Fish and Wildlife Program. A companion law was enacted August 22, 1984, to provide, among other things, for operations and maintenance costs related to fish facilities (Pub. L. 98–396, 98 Stat. 1379).

Alternatives are being developed to construct fish passage facilities for Cle Elum Dam which includes both downstream juvenile passage and upstream adult passage. The downstream passage facilities, as currently envisioned, would include an intake structure located just above the spillway inlet channel and a conduit through the right abutment of the dam. These modifications will provide surface releases in enough volume to attract migrating juvenile fish to an overflow gate in the reservoir that will lead to a conduit that will safely discharge the fish downstream from the dam.

The proposed upstream fish passage would consist of a trap and haul facility. Fish collected at the facility would be placed into a fish transport truck and hauled upstream for release into the reservoir and upstream tributaries.

The fish re-introduction project proposes to restore populations of sockeye salmon (*Onchorynchus nerka*), coho salmon (*O. kisutch*), spring chinook salmon (*O. tshawytscha*), summer steelhead (*O. mykiss*), and Pacific lamprey (*Lampetra tridentata*) through the use of hatchery supplementation techniques. Existing hatchery facilities would be used for the program and no new facilities would be constructed. The re-introduction project would initially focus on restoring coho salmon above Cle Elum Dam. The additional species would be added to the project incrementally over time. A strategy has been developed for near-term, mid-term and long-term actions.

**Public Involvement**

Reclamation and Ecology in collaboration with WDFW will conduct a public scoping meeting to solicit comments on the alternatives for the Cle Elum Fish Passage Facilities and Fish Re-Introduction Project, and to identify potential issues and impacts associated with those alternatives. Reclamation and Ecology will summarize comments received during the scoping meeting and from letters of comment received during the scoping period, identified under the **DATES** section, into a scoping summary document that will be made available to those who have provided comments. It will also be available to others upon request. If you wish to comment, you may mail us your comments as indicated under the **ADDRESSES** section.

**Public Disclosure**

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you 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.

**Timothy Personius,**

*Acting Regional Director, Pacific Northwest Region.*

[FR Doc. E9–7405 Filed 4–7–09; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Glen Canyon Dam Adaptive Management Work Group (AMWG)

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

**DATES AND ADDRESSES:** The AMWG will conduct the following meeting:

*Date:* Wednesday–Thursday, April 29–30, 2009. The meeting will begin at 9:30 a.m. and end at 5 p.m. the first day and will begin at 8 a.m. and conclude at approximately 12:30 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs, 2 Arizona Center, 400 N. 5th Street, 12th Floor, Conference Rooms A & B, Phoenix, Arizona.

*Agenda:* The purpose of the meeting will be for the AMWG to receive updates and discuss the following items: (1) Final Fiscal Year 2008 expenditures, (2) Review of Fiscal Year 2010–11 priorities and preliminary budget, workplan, and hydrograph, (3) Status of Grand Canyon Monitoring and Research Center projects, (4) Species extirpated from Grand Canyon, (5) Biological opinion conservation measures, (6) Basin hydrology, as well as other administrative and resource issues pertaining to the AMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/09apr29/index.html*. Time will be allowed for any individual or organization wishing to make formal oral comments on the call. To allow for full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone 801–524–3715; facsimile 801–524–3858; e-mail at *dkubly@uc.usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

**FOR FURTHER INFORMATION CONTACT:** Dennis Kubly, Bureau of Reclamation, telephone (801) 524–3715; facsimile (801) 524–3858; e-mail at *dkubly@uc.usbr.gov.*

Dated: March 19, 2009.

**Dennis Kubly,**

*Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.*

[FR Doc. E9–7949 Filed 4–7–09; 8:45 am]

**BILLING CODE 4310–MN–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Preliminary)]**

### Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–462 and 731–TA–1156–1158 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Indonesia, Taiwan, and Vietnam of polyethylene retail carrier bags, provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Vietnam. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by May 15, 2009. The Commission's views are due at Commerce within five business days thereafter, or by May 22, 2009.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**DATES:** *Effective Date:* March 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joshua Kaplan (202–205–3184), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on March 31, 2009, by Hilex Poly Co., Hartsville, SC and Superbag Corporation, Houston, TX.

*Participation in the Investigations and Public Service List.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.*—Pursuant to

section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 21, 2009, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Joshua Kaplan (202–205–3184) not later than April 16, 2009, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written Submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 24, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 1, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–7967 Filed 4–7–09; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1103–NEW]**

## Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Community Policing Self-Assessment (CP–SAT).

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 30 days for public comment until May 8, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection; comments requested.

(2) *Title of the Form/Collection:* Community Policing Self-Assessment (CP–SAT).

(3) *Agency Form Number, If Any, and the Applicable Component of the Department Sponsoring the Collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected Public Who Will Be Asked or Required to Respond, as Well as a Brief Abstract: Primary:* Law Enforcement Agencies and community partners. The purpose of this project is to improve the practice of community policing throughout the United States by supporting the development of a series of tools that will allow law enforcement agencies to gain better insight into the depth and breadth of their community policing activities.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond/Reply:* It is estimated that approximately 800 respondents will respond with an average of 1 hour per response.

(6) *An Estimate of the Total Public Burden (In Hours) Associated With the Collection:* The total estimated burden is 800 hours across 103 agencies.

*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: April 3, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–7958 Filed 4–7–09; 8:45 am]

**BILLING CODE 4410–AT–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act

Notice Is Hereby Given That On March 30, 2009, A Proposed Consent Decree in *United States* v. *Massachusetts Department of Conservation and Recreation, et al.*, Civil Action No. 1:09–cv–117–JD, was lodged with the United States District Court for the District of New Hampshire.

The proposed Consent Decree will settle the United States' claims on behalf of the U.S. Environmental Protection Agency (''EPA'') brought against defendants Massachusetts Department of Conservation and Recreation and Massachusetts State Police (collectively referred to as ''Settling Defendants'') pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, with respect to the Beede Waste Oil Superfund Site in Plaistow, New Hampshire.

Pursuant to the Consent Decree, the Massachusetts State Police will pay $2,322,316.75 toward financing the work at the Site. In addition, the Massachusetts State Police will pay $188,423.39 directly to EPA's Beede Waste Oil Superfund Site Special Account. The Massachusetts Department of Conservation and Recreation is a *de minimis* party at the Site and shall pay $344,626.21 toward financing the work at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Massachusetts Department of Conservation and Recreation, et al.*, Civil Action No. 1:09–cv–117–JD, D.J. Ref. 90–11–3–07039/12. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 53 Pleasant Street, Concord, New Hampshire 03301, and at the United States Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy by mail from the Consent Decree Library, please enclose a check in the amount of $10.00 ($0.25 per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9–7887 Filed 4–7–09; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Clean Diesel V

Notice is hereby given that, on February 24, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Clean Diesel V (''Clean Diesel V'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Exxon Mobil Corporation, Paulsboro, NJ has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Clean Diesel V intends to file additional written notifications disclosing all changes in membership.

On January 10, 2008, Clean Diesel V filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2008 (73 FR 10064).

The last notification was filed with the Department on October 27, 2008. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 21, 2008 (73 FR 70674).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–7393 Filed 4–7–09; 8:45 am]

**BILLING CODE 4410–11–M**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Atmospheric 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:* NASA/NSF/AFOSR Space Weather Modeling (10751).

*Dates:* 8 a.m.–6 p.m. Monday, April 13, 2009.

8 a.m.–3 p.m. Tuesday, April 14, 2009.

*Place:* 4201 Wilson Blvd., Rm. 555, Stafford II, Arlington, VA 22230.

*Type of Meeting:* Part-open.

*Contact:* Dr. Therese Moretto, Program Director for the Upper Atmosphere Research Section, Division of Atmospheric Sciences, National Science Foundation; 4201 Wilson Blvd, Rm. 775, Arlington, VA 22230 (703) 292–8518.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To conduct a mid-term review and evaluate awards supporting the NASA/NSF/AFOSR partnership for Collaborative Space Weather Modeling.

Agenda

April 13, 2009

8 a.m.–2:45 p.m. Open—PI Project Status Presentations.

3 p.m.–4 p.m. Open—Additional questions/discussion with PIs.

4 p.m.–6 p.m. Closed—Panel deliberations, formulation of preliminary findings, comments and questions.

April 14, 2009

8 a.m.–10 a.m. Open—Panel presentation of preliminary findings, comments and questions.

10:15 a.m.–12 p.m. Open—Further discussion with project teams as needed.

1 p.m.–3 p.m. Closed –Panel final deliberations and finalizing site-visit reports.

*Reason for Late Notice:* Due to unforeseen scheduling complications and the necessity to proceed with the review.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 2009.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E9–7971 Filed 4–7–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research; 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:* Facility Operations Review Panel of the Division of Materials Research (1203).

*Dates & Times:* April 27, 28, 29, 2009.

*Place:* Cornell University, Ithaca, NY.

*Type of Meeting:* Part-open.

*Contact Person:* Dr. Guebre X. Tessema, Program Director, National Facilities Programs, Division of Materials Research, Room 1080, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4935.

*Purpose of Meeting:* To provide advice and recommendations concerning operations of the Cornell High Energy Synchrotron Source (DMR) # 0936384.

**Agenda:**

*Monday, April 27*

7 p.m.–8:30 p.m. Closed—Working Dinner and Executive Session.

*Tuesday, April 28*

8 a.m.–11:45 a.m. Open—CHESS Overview and Presentations by Principal Investigator and staff, Proposed Scientific Initiatives I.

11:45 a.m.–12:15 p.m. Closed—Executive Session.

12:15 p.m.–4:30 p.m. Open—Lunch with graduate students, tour of facilities, Presentations by Principal Investigator and staff, Proposed Scientific Initiatives II.

8 p.m.–10 p.m. Executive Session.

*Wednesday, April 29*

8 a.m.–3 p.m. Closed—Executive Sessions and report writing.

*Reason for Closing:* The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E9–7970 Filed 4–7–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–387 and 50–388; NRC–2009–0152]**

### PPL Susquehanna, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PPL Susquehanna, LLC, (the licensee) to withdraw its March 28, 2008, application for proposed amendment to Facility Operating License Nos. NPF–14 and NPF–22 for the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed change would have modified PPL Susquehanna, LLC, Units 1 and 2 (PPL) Technical Specifications (TSs) TS 3.6.4.1 ''Secondary Containment,'' and TS 3.6.4.3 ''Standby Gas Treatment System,'' as follows:

(1) To add a new Required Action option for TS 3.6.4.1 Condition A, to allow additional time to restore secondary containment to OPERABLE when the inoperability is not caused by a loss of secondary containment integrity,

(2) To add a new Actions note TS 3.6.4.1, to allow opening of secondary containment heating ventilation and air conditioning duct access doors and opening of a secondary containment equipment ingress/egress door (102 door) under administrative controls provided no movement of irradiated fuel assemblies in the secondary containment, CORE ALTERATIONS, or operations with a potential for draining the reactor vessel (OPDRVs) are in progress,

(3) To modify the existing note to Surveillance Requirement (SR) 3.6.4.1.3 and add a second note to this same SR, to expand upon the existing SR exception note by adding other types of door access openings that occur for entry and exit of people or equipment, and

(4) The administrative change to remove a one-time allowance in TS 3.6.4.1 and TS 3.6.4.3 ''Standby Gas Treatment System [SGTS],'' that extended the allowable Completion Time for Secondary Containment inoperable and two SGTS subsystems inoperable in MODE 1, 2, or 3. This allowance was previously incorporated into both Unit 1 and Unit 2 TSs to facilitate Reactor Recirculating Fan Damper Motor work.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 6, 2008, (73 FR 25044). However, by letter dated March 27, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 28, 2008, and the licensee's letter dated March 27, 2009, 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/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of March 2009.

For the Nuclear Regulatory Commission.

**Bhalchandra K. Vaidya,**

*Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E9–7810 Filed 4–7–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0144]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* ''Reporting and Recordkeeping Requirements for Export and Import of Nuclear Equipment and Material,'' formerly, ''Export and Import of Nuclear Equipment and Material.''

2. *Current OMB approval number:* 3150–0036.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of a general or specific license.

5. *The number of annual respondents:* 103.

6. *The number of hours needed annually to complete the requirement or request:* 524.

7. *Abstract:* Persons in the U.S. who export or import nuclear material or equipment under a general or specific authorization must comply with certain reporting and recordkeeping requirements under 10 CFR part 110.

Submit, by June 8, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0144. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0144. Mail comments to NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6874, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 30th day of March 2009.

For the Nuclear Regulatory Commission.

**Gregory Trussell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. E9–7947 Filed 4–7–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 55–61336; License No. SOP–11801 (Terminated); IA–09–014; NRC–2009–0156]**

### In the Matter of Keith Davis; Order Prohibiting Involvement in NRC–Licensed Activities

**I**

Keith Davis (Mr. Davis) was previously employed as a Senior Reactor Operator (SRO) at PPL Corporation's Susquehanna Steam Electric Station (SSES or the facility), located in Berwick, Pennsylvania. Mr. Davis was the holder of SRO License Number SOP–11801, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 55. The license authorized Mr. Davis to direct the licensed activities of SSES licensed operators, and to manipulate the controls of the facility. The license was terminated on August 1, 2006.

**II**

In a letter dated July 2, 2007, the NRC provided to Mr. Davis the results of an investigation initiated by the NRC Office of Investigations (OI). The letter informed Mr. Davis that the NRC was considering escalated enforcement action against him for an apparent violation of his SRO license due to his failure to report an arrest as required by SSES procedures. The NRC offered Mr. Davis a choice to attend a Predecisional Enforcement Conference or to request Alternate Dispute Resolution (ADR) to resolve any disagreement over: (1) whether a violation occurred; and (2) The appropriate enforcement action. At his request, an ADR mediation session was held between Mr. Davis and the NRC on September 27, 2007, and a settlement agreement was reached regarding his role in this matter. Mr. Davis confirmed his agreement, in principle, on November 16, 2007, when he signed the Consent and Hearing Waiver form, consenting to the issuance of a Notice of Violation and Confirmatory Order containing commitments agreed to in the settlement.

On November 26, 2007, the NRC issued a Notice of Violation (Notice) to Mr. Davis for his failure to report the arrest. The Notice characterized the violation at Severity Level III. The NRC also issued the Confirmatory Order confirming the commitments made as part of the settlement agreement. The Confirmatory Order required Mr. Davis to complete the commitment actions within three months of the date of the Confirmatory Order, and then inform the NRC within one month of completion.

The actions included:

a. Writing an operating experience report addressing lessons learned from the violation;

b. Providing the report to the NRC for review and then submitting it to a minimum of three national organizations for possible publication;

c. Providing a written response to the NRC explaining why the NRC can have confidence that Mr. Davis will follow licensee procedures and meet NRC regulations, should he work in the nuclear industry in the future; and

d. Preparing a licensed and non-licensed operator training plan regarding procedure compliance and the lessons learned from this issue, and

providing the plan to SSES for its potential use.

In accordance with the Confirmatory Order, Mr. Davis was required to notify the NRC, in writing, of completion of these activities by March 27, 2008.

The requirement to respond to an NRC Order is outlined in 10 CFR 2.202(b), which states, in part: A licensee or other person, to whom the Commission has issued an order under this section, must respond to the order by filing a written answer under oath or affirmation. Mr. Davis failed to respond to the Confirmatory Order.

After the NRC made several unsuccessful attempts to contact Mr. Davis, the NRC OI located and spoke with him on October 17, 2008. At that time, Mr. Davis informed OI that he did not agree with the ADR settlement to which he had consented, and that it was for this reason that he did not accept and/or ignored the NRC's correspondence attempts. On October 17, 2008, Mr. Davis also contacted the RI senior enforcement specialist by telephone, and explained that he was not in agreement with the conclusions of the ADR, and that he chose to not complete the Confirmatory Order actions or notify the NRC of his disagreement. The senior enforcement specialist instructed Mr. Davis to send a letter to the RI Regional Administrator explaining his position and reasons for not complying with the Confirmatory Order. As of the date of this Order, Mr. Davis has neither provided this letter nor otherwise responded to the November 26, 2007 Confirmatory Order.

**III**

Based on the above, the NRC has concluded that Keith Davis violated 10 CFR 2.202(b), by failing to respond to an NRC Confirmatory Order. This conclusion is based on: (1) Mr. Davis's statements to the RI OI that he no longer agreed with the ADR settlement and that he knowingly did not accept and/or ignored NRC correspondence requesting his response to the Confirmatory Order; (2) Mr. Davis's failure to contact the NRC regarding his disagreement with the ADR settlement; and (3) Mr. Davis's continued failure to respond to the Confirmatory Order.

As a result, I no longer have the necessary assurance that Mr. Davis, should he engage in NRC-licensed activities under any other NRC license, would perform NRC-licensed activities safely and in accordance with NRC requirements, and that the health and safety of the public will be protected if Mr. Davis were permitted at this time to be involved in NRC-licensed activities.

Therefore, the public health, safety, and interest require that Mr. Davis be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order, and that Mr. Davis notify the NRC of his first employment in NRC-licensed activities for a period of three years following the prohibition period.

**IV**

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that:*

1. Keith Davis is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Keith Davis is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. Keith Davis shall, within 20 days following acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Davis of good cause.

**V**

In accordance with 10 CFR 2.202, Mr. Davis must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Mr. Davis and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August, 2007, 72 FR 49,139 (Aug. 28, 2007). The E–Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E–Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the

proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer.

Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Mr. Davis requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by Mr. Davis or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 1st day of April 2009.

For the Nuclear Regulatory Commission.

**Cynthia A. Carpenter,**

*Director, Office of Enforcement.*

[FR Doc. E9–7946 Filed 4–7–09; 8:45 am]

**BILLING CODE**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, April 9, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

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. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the closed meeting in closed session and determined that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Thursday, April 9, 2009 will be:

Institution and settlement of an injunctive action

Institution and settlement of administrative proceedings of an enforcement nature; and

Other matters relating to enforcement proceedings.

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: April 3, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–7929 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59682; File No. SR–BX–2009–018]**

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

April 1, 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 March 25, 2009, NASDAQ OMX BX, Inc. (''BX'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement this rule change on April 1, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at BX's principal office, 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, BX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BX is proposing to modify its pricing for execution of orders in securities listed on The NASDAQ Stock Market (''NASDAQ'') and the New York Stock Exchange (''NYSE''). Specifically, BX will eliminate the current $0.0020 per share executed credit for orders that provide liquidity through BX, and will instead institute a $0.0006 per share executed credit for orders that access liquidity in securities priced at $1 or more per share. BX currently charges $0.0014 for such orders. For securities priced at less than $1, the fee will remain 0.1% of the total cost of the transaction. Fees and credits to access and provide liquidity in securities listed on exchanges other than Nasdaq and NYSE will remain unchanged.

Since its launch on January 16, 2009, BX has begun to acquire market share in U.S. equities trading, a move accelerated by promotional price reductions introduced in March 2009 that made the net cost of trading a share on BX (*i.e.,* the difference between the fee to access and the credit to provide liquidity) negative six cents per one hundred shares. BX has observed, however, that widespread reductions in the quoted prices of cash equities have increased the relative costs of accessing liquidity by making bid-ask spreads account for a greater percentage of that cost. Members have become more focused than ever on paying the lowest possible cost when accessing liquidity. Accordingly, BX is eliminating its credit for liquidity provision and instead introducing a credit for accessing liquidity. The net cost of trading a share remains negative six cents per one hundred shares. As with the pricing introduced in March 2009 (which continues for securities listed on exchanges other than NASDAQ and NYSE), the pricing structure will remain in effect for a limited promotional period, the exact duration of which will be determined by BX based on the effect of the pricing on members' use of BX's execution services.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. The impact of the changes upon a particular market participant will depend upon the order types that it uses and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity). BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed changes will lower the cost of accessing liquidity through BX, while maintaining the net cost of a trade at a constant level.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

BX 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–018 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–BX–2009–018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–018 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7869 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(a)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59681; File No. SR–NYSE–2009–37]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Implementing a Cap on Vendors' Administrative Charges for NYSE OpenBook

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange''), 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce a cap on the monthly charges that broker-dealers and vendors are required to pay for their use of NYSE OpenBook data for the purposes of administering their provision of NYSE OpenBook product offerings. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE OpenBook responds to the desire of some market participants for depth-of-book data. It is a compilation of limit order data that the Exchange provides to market data vendors through a data feed.

Recently, the Commission approved the Exchange's proposed rule change to, among other things, establish a one-year pilot program to simplify and modernize market data administration (the ''Unit of Count Filing'').[3] It proposed to do so by redefining some of the basic ''units of measure'' that vendors are required to report to the Exchange and on which the Exchange bases its fees for its NYSE OpenBook product packages.

Previously, the Exchange required broker-dealers and vendors to report and pay for, among other devices, all devices that they use to administer their provision of NYSE OpenBook services to their external customers. Under the Unit of Count Filing, in connection with a vendor's internal distribution of NYSE OpenBook data, the vendor would be required to count as one fee-liable entitlement each unique individual (but not devices) that the vendor has entitled to have access to the Exchange's NYSE OpenBook data. This would include vendor personnel whose sole function is to administer the vendor's market data services externally, that is, to the vendor's customers.

After discussions with vendors, the Exchange seeks to simplify, limit, and clarify the vendor's payment obligation for administering NYSE OpenBook services. For that reason, the Exchange proposes to modify its policy regarding the payment of fees in respect of each unique individual that is affiliated with the vendor, and to whom the vendor distributes NYSE OpenBook data internally for administrative purposes. A person is ''affiliated'' with the vendor if he or she is an officer, partner, member, or employee of the vendor or an affiliate of the vendor or enjoys a similar status with the vendor or affiliate.

Thus, the Exchange proposes to continue its practice of charging user fees for internal use of data, but proposes to establish a maximum monthly amount of $1500 (the ''Monthly Maximum'') for entitlements consisting of unique individuals within a vendor's organization to whom the vendor distributes NYSE OpenBook data for the sole purpose of administering the vendor's distribution of NYSE OpenBook services externally to the vendor's customers. The Monthly Maximum of $1500 means that a vendor would have to pay for no more than 25 NYSE OpenBook administrative personnel.

For this purpose, the Exchange deems ''administer'' to mean monitoring and surveilling the receipt and use of NYSE OpenBook data by the vendor's customers, marketing NYSE OpenBook data to potential new customers, performing the Exchange-required reporting function and the performance of similar functions relating to the vendor's provision of NYSE OpenBook services to its external customers. It does not include, among other things, the use of OpenBook data to monitor securities, to make trading decisions, to value portfolios, in news rooms, or otherwise to use NYSE OpenBook data to perform any functions not related to the provision of NYSE OpenBook functions to the vendor's external customers.

The purpose of this exception is to permit vendors to cap their financial exposure in performing their NYSE OpenBook administrative functions and to simplify the tracking and reporting of devices used in the administrative function. The vendor need only divide its internal personnel, using the data, into two categories: Those using the data to support the vendor's external service, and those using the data for any other purposes. Alternatively, a vendor that makes no other internal use of data other than supporting its external service can decide to pay the monthly maximum without the need to track and report any internal usage. At the same time, the Exchange must guard against potential abuse of this exception. Therefore, the Exchange reserves the rights under its contracts with vendors to monitor its use closely and to deny application of this exception if it discovers that a vendor is misusing it, such as by allowing personnel to use NYSE OpenBook for non-administrative functions.

Any vendor that distributes NYSE OpenBook data externally to customers is entitled to take advantage of the Monthly Maximum, though it anticipates that only the largest vendors devote sufficient personnel to administrative functions to take advantage of the Monthly Maximum. In the Exchange's view, limiting the fee exposure of its largest vendors does not unreasonably discriminate against other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–59544; 74 Federal Register 11162 (March 16, 2009); File No. SR–NYSE–2008–131.

vendors under Section 603(a)(2) of Regulation NMS.

NYSE OpenBook is subject to significant competitive forces and the establishment of the Monthly Maximum represents a response to that competition. As the Exchange stated in the Unit of Count Filing, the Exchange competes intensely for order flow, competing with the other 10 national securities exchanges, with ECNs, with quotes posted in FINRA's ADF and TRFs, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow. The competition is free produce [sic] depth-of-book products, and Nasdaq, NYSE Arca, and BATS are among those who currently do.

In addition, the Exchange believes that no substantial countervailing bases exists to support a finding that the Monthly Maximum for NYSE OpenBook fails to meet the requirement of the Act.

In sum, the Exchange believes that the proposed Monthly Maximum is fair and reasonable.

2. Statutory Basis

The bases under the Act for this proposed rule change are the requirement under Section 6(b)(4)[4] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[5] that the rules of an exchange be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2009–37 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–37. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–37 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7868 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59676; File No. SR–CBOE–2009–020]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Close of Trading Hours on the Last Day of Trading in Expiring Quarterly Index Expirations

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to amend Rule 24.6 to change the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) on the last day of trading in expiring Quarterly Index Expirations (''QIXs''). The filing also proposes to amend Rule 24.9(c) by adding the Mini-SPX Index to the list of broad-based indices on which the Exchange may list QIXs. In addition, the filing proposes to amend Rule 24.9 by making technical

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

changes that add the Mini-SPX Index to the lists of European-style exercise and A.M. settled options approved for trading on the Exchange. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend Rule 24.6 to change the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) on the last day of trading in expiring Quarterly Index Expirations (''QIXs''). The Exchange proposes that the change to the close of trading hours on the last trading day applies to all outstanding expiring QIXs that expire at the end of the second calendar quarter in 2009 and thereafter.

QIXs were introduced in 1993 and are separate from the Quarterly Option Series Pilot Program provided for in Rule 5.5 and 24.9.[5] QIXs are cash-settled options on certain specified broad-based indices that expire on the first business day of the month following the end of a calendar quarter.[6] QIXs trade simultaneously with, not independent of, traditional options on the same underlying index. QIXs are subject to the same rules that currently govern the trading of traditional index options, including sales practice rules, margin requirements, and floor trading proceedings. Contract terms for QIXs are similar to traditional index options, with one general exception: the exercise settlement value is based on the index value derived from the closing prices of component stocks. In addition, the contract multiplier for QIXs may be set at 500 rather than the customary 100. Positions in QIXs are aggregated with option contracts on the same broad-based index and are subject to the applicable overall position limit.[7]

Generally, QIXs are priced in the market based on corresponding futures values. On the last day of trading, the closing prices of the component stocks (which are used to derive the exercise settlement value) are known at 3 p.m. (Chicago time) (or soon after) when the equity markets close. Despite the fact that the exercise settlement value is fixed after 3 p.m. (Chicago time), trading in expiring QIXs continues, however, for an additional fifteen minutes until 3:15 p.m. (Chicago time) and are not priced on corresponding futures values, but rather the known cash value. At the same time, the prices of non-expiring QIX series continue to move and be priced in response to changes in corresponding futures prices.

Because of the pricing divergence that occurs between 3 and 3:15 p.m. on the final trading day in expiring QIXs (*e.g.*, switch from pricing off of futures to cash), the Exchange believes that there is a risk to allow investors to continue trading expiring QIX contracts after 3 p.m. (Chicago time) on the last day of trading. As a result, the Exchange seeks to remedy any confusion by changing the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) for expiring QIXs on the last day of trading.

It is expected that other options exchanges that have adopted QIX rules will submit similar proposals.

The Exchange is also proposing to amend Rule 24.9(c) by adding the Mini-SPX Index to the list of broad-based indices on which the Exchange may list QIXs, which offers an additional method of tailoring portfolio hedges that expires on the last day of the calendar quarter. Finally, the Exchange is proposing to amend Rule 24.9 by making technical changes that add the Mini-SPX Index to the lists of European-style exercise and A.M. settled options approved for trading on the Exchange.[8]

2. Statutory Basis

Because the Exchange believes that the current rule proposal will lessen investor confusion, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[11] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] 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

[5] *See* Securities and Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13) (QIX approval order).

[6] *See id.* and Rule 24.9(c).

[7] *See* Rule 24.4(b).

[8] In the original filing to list and trade Mini-SPX Index options, the Exchange inadvertently omitted to add the Mini SPX-Index to the lists of European-style exercise and A.M settled options approved for trading on the Exchange. *See* Securities Exchange Act Release No. 32893 (September 14, 1993) 58 FR 49070 (September 21, 1993) (SR–CBOE–93–12) (Mini-SPX Index option approval order). Options on the reduced-value version of the Standard & Poor's S&P 500 Stock Index are known as ''Mini-SPX Index options.''

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] The Exchange has fulfilled this requirement.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

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–CBOE–2009–020 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–CBOE–2009–020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–020 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7974 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59696; File No. SR–FINRA–2009–020]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the FINRA Regulation Board Composition and Conforming Changes to the FINRA Regulation By-Laws

April 2, 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 March 27, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend the By-Laws of FINRA's regulatory subsidiary (''FINRA Regulation'') to modify the FINRA Regulation Board (''FINRA Regulation Board'') composition, to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-Laws, and to reflect the corporate name change and similar matters.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA 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, FINRA 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. FINRA 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

Background on FINRA and Its Regulatory Subsidiary

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes.[3] The approved changes included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms of various sizes based on the criteria of firm size.

FINRA Regulation (formerly known as NASD Regulation) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted first in 1996 when it formed NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws. On November 6, 2008, the Commission approved a proposed rule change to amend Articles I, II, III, V, VI, VII, IX, X and XIII, Section 4.16 of Article IV, and all of Article VIII except Section 8.7 and all of Article XII except Section 12.3, to realign the representation of industry members on the National Adjudicatory Council to follow more closely the categories of industry representation on the FINRA Board. *See* SR–FINRA 2008–046, Securities Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (November 18, 2008).

Changes to the FINRA Regulation Board Composition To Parallel the FINRA Board

The proposed rule change would make limited modifications to Article IV

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR–NASD–2007–023).

of the FINRA Regulation By-Laws to parallel more closely the governance structure of the FINRA Board. To reflect FINRA's current governance structure, the proposed rule change establishes that FINRA Regulation Board members are drawn exclusively from the FINRA Board.[4] In accordance with this change, the National Adjudicatory Council (NAC) Chair will no longer be a member of the FINRA Regulation Board.[5] The rule change also eliminates specific references to representatives of an issuer of investment company shares and an insurance company (or affiliated members) from the required composition of the Board. Because the FINRA Board includes a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor, any of these Governors may serve on the subsidiary's Board.

The proposed rule change would apply to the FINRA Regulation Board the requirement, which exists in the FINRA By-Laws, that the FINRA Regulation Board have more Public Directors than Industry Directors.[6] In furtherance of this change, references throughout Article IV to balancing Industry and Non-Industry Board members have been replaced with references to balancing Industry and Public Board members. The proposal likewise would remove the requirement that the Executive Committee include at least one Public Director and institute the requirement that Public Directors shall exceed Industry Directors on FINRA Regulation's Executive Committee of the Board.[7]

The proposed rule change would continue FINRA's custom of substantial industry participation on the board of its regulatory subsidiary. Currently, selection of the FINRA Board includes a petition process that allows for additional candidates for seven Industry Governor seats to be elected in contested elections. To ensure that the fair representation of industry members on the FINRA Board is similarly reflected on the FINRA Regulation Board, the proposal would establish that the FINRA Regulation Board include 20%, and not less than two, Small, Mid-Size, or Large Firm Governors.[8] These provisions would establish a minimum floor of 20% of the FINRA Regulation Board Directors coming from FINRA Governor seats with potential contested elections and would ensure that a minimum of two such Governors would serve on the FINRA Regulation Board.[9]

The proposed rule change would clarify the conditions under which the FINRA Regulation Board can meet. The current FINRA Regulation By-Laws instruct that a Director can waive notice of a Board meeting by being present at the meeting, so long as the Director did not attend the meeting solely to object to the meeting taking place.[10] The proposed addition to Section 4.12(c) clarifies that a Board meeting is a legal meeting if all Directors are present and no Director is present solely for the purpose of objecting to the meeting taking place.

## Post-Consolidation Changes to FINRA Board Responsibilities

The proposed rule change would implement minor alterations regarding removing FINRA Regulation Board members, filling a vacant board seat, and selection of the Chair of FINRA Regulation's Board. FINRA Regulation is a stock corporation organized in the State of Delaware. First, the proposal would transfer the authority to remove Directors from a majority vote of the FINRA Board to the stockholder of FINRA Regulation[11] to accommodate Delaware law, which requires that a stock corporation vest the power to remove directors with the stockholder.[12] Second, Directors of FINRA Regulation currently are elected annually at the meeting of FINRA Regulation's stockholder or at a special meeting dedicated to FINRA Regulation Board elections. When the annual election of Directors is not held on the designated date, the By-Laws charge the Directors to ''cause such election'' to be held.[13] The proposed rule change would confirm that the same process should be used by the FINRA Regulation Board when filling vacancies among its ranks. The proposal would adopt language that the FINRA Board shall ''cause the election'' of a qualified Director to fill the vacant position.[14] Third, the proposal would transfer the task of selecting the Chair of the FINRA Regulation Board from the Board members to FINRA Regulation's stockholder.[15] The proposal also would:

- Eliminate the requirement that the Board select a Vice Chair as unnecessary; [16]
- Indicate that the stockholder would designate the Chair at the same time that the Directors are elected; [17]
- Eliminate as unnecessary the reference to the first meeting of NASD

[4] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications). The current provision provides, in part, that ''[t]he Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member.''

[5] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications). The NAC Chair's automatic service on the FINRA Board of Governors was eliminated in 2007 as one of the changes to the FINRA By-Laws made during the NASD and NYSE consolidation.

[6] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications). The current provision provides, in part, that ''[t]he number of Non-Industry Directors shall equal or exceed the number of Industry Directors.''

[7] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.13(f) (Committees). The current provision provides, in part, that ''[t]he Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Regulation shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members.''

[8] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3 (Qualifications). The current provision provides, in part, that ''[i]f the Board consists of 5–7 Directors, it shall include at least one Public Director. If the Board consists of eight to nine Directors, at least two Directors shall be Public Directors. If the Board consists of ten to twelve Directors, at least three Directors shall be Public Directors, and if the Board consists of thirteen to fifteen Directors, at least four shall be Public Directors.''

[9] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications).

[10] *See* current FINRA Regulation By-Laws, Article IV, Section 4.12(b) (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3(b) (Waiver of Notice).

[11] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.6 (Removal). The sole stockholder of the capital stock of FINRA Regulation is FINRA, Inc. *See* Article XI, Section 11.1 (Sole Stockholder).

[12] *See* Delaware General Corporation Law, § 141(k). As a practical matter, the FINRA Board generally would be asked to pass a resolution authorizing an officer of FINRA to execute a sole stockholder consent on behalf of FINRA (who is the sole stockholder of FINRA Regulation) before such a consent is executed. As such, the FINRA Board would have a voice in the matter, but as a matter of Delaware law, the consent authorizing the removal must be executed by a duly authorized officer of FINRA in FINRA's capacity as sole stockholder.

[13] *See* current FINRA Regulation By-Laws, Article IV, Section 4.4 (Election).

[14] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.8 (Filling of Vacancies). Pursuant to the General Corporation Law, FINRA, as the sole stockholder of FINRA Regulation, has the authority to execute a stockholder consent electing an individual to the fill the vacancy pursuant to directions of the FINRA Board. Alternatively, the FINRA Board may pass a resolution making it known who they would like appointed to fill the vacancy. Under this scenario, it is likely that the remaining members of the FINRA Regulation Board will follow the advice of its controlling stockholder and elect the recommended individual. *See* Delaware General Corporation Law, § 223.

[15] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications). See also Delaware General Corporation Law § 142, which allows the sole stockholder to make this selection if expressly provided for in the By-Laws.

[16] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications).

[17] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications). The current provision provides, in part, that the Board shall designate a Chair ''as soon as practicable, following the annual election of Directors.''

Regulation at which Directors initially were elected; [18]

• Clarify that when a Director is disqualified from Board service and the Director's remaining term is not more than six months, the Board may continue to operate and will not violate any compositional requirements if it does not replace the disqualified Director; [19]

• Remove the requirement that written notice of resignation by Directors be submitted to the President; [20] and

• Eliminate as unnecessary a cross-reference in the quorum provision and state that, when there is a quorum, a majority vote of the Directors present at a meeting constitutes action of the Board.[21]

Changes To Reflect Practices Regarding the Capital Stock of FINRA Regulation

The proposed rule change would amend several provisions regarding FINRA Regulation's capital stock. FINRA's approach to the corporate law issue of signing certificates representing shares of FINRA Regulation capital stock is to have these shares signed by FINRA Regulation officers. Because FINRA Regulation does not have an officer as Chair of the Board, the possibility of the Chair signing stock certificates is being deleted.[22] The proposal would eliminate limitations on when signatures on certificates representing shares of FINRA Regulation's capital stock may be facsimiles and would allow any signature to be a facsimile.[23] Given that currently certificates representing capital stock may be sealed with a facsimile of FINRA Regulation's corporate seal, this change would apply the same flexible approach to signatures on the certificates.

Currently, one section of the By-Laws requires that the FINRA Regulation Secretary, or another officer, employee, or agent, keep a record of FINRA Regulation's capital stock ownership and ''the number of shares represented by each such certificate.'' [24] Tracking this language and applying it elsewhere, the proposal would change several phrases that discuss capital stock to ''certificates representing shares of capital stock'' or similar constructions instead of ''certificates for shares of capital stock.'' This change would make the By-Laws more consistent with the language of the applicable section of the General Corporation Law of the State of Delaware.[25] The proposal would delete as imprecise the words ''certificates for'' in the discussion of potential registration of shares of capital stock.[26]

Conforming Changes Relating to the New FINRA Name and Other Minor Changes

The proposed rule change would make certain non-substantive changes to Articles IV and XI of the FINRA Regulation By-Laws as follows:

• ''The NASD'' or ''NASD'' is replaced with ''FINRA'' or ''the Corporation;''

• ''NASD Regulation'' is changed to ''FINRA Regulation;''

• ''The Rules of the Association'' is replaced with ''the Rules of the Corporation,'' and

• ''National Nominating Committee'' is replaced with ''Nominating Committee.''

The proposed rule change would update sections of the FINRA Regulation By-Laws to acknowledge current practices. Because the President of FINRA Regulation is not designated to be a Governor on the FINRA Board, the proposed rule change would delete several references to the President of FINRA Regulation.[27]

The proposed rule change would amend and eliminate exceptions to the statement in Section 4.3 that the Chief Executive Officer (''CEO'') of FINRA shall be an *ex-officio* non-voting member of the FINRA Regulation Board. In particular, the proposed rule change would eliminate the exception regarding the CEO of FINRA also serving as President of FINRA Regulation and retaining the power to vote, among other powers. The FINRA Regulation Board will operate without this exception.

The proposed rule change would revise Article IV, Section 4.12 (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3 (Waiver of Notice) to reflect advances in technology and the common usage of electronic transmission as a means of communication. In both these sections, FINRA intends ''electronic transmission'' to include e-mail, text messages, and related technologies as well as facsimile, radio, cable, wireless, or telegraph. The proposal would make a related change to Article IV, Section 4.15 (Action Without Meeting) to eliminate the requirement that unanimous consent to taking action without a meeting specifically be in writing and filed with the minutes of the meeting. Instead, the consent would need to be ''in accordance with'' Delaware law, which allows a board to take action pursuant to unanimous consent communicated by electronic transmission.[28]

Furthermore, the proposed modifications also would delete as unnecessary the provision that allowed the advisory council to attend a FINRA Regulation Board meeting, but not to vote.[29]

Proposed Schedule A to the FINRA Regulation By-Laws would describe the boundaries for districts one through eleven. These boundaries are not changing. The description of district boundaries is being proposed for deletion as Schedule B from the FINRA By-Laws and is being proposed for addition as Schedule A to the FINRA Regulation By-Laws for administrative convenience because the districts are established in Article VIII, Section 8.1 (Establishment of Districts) of the current FINRA Regulation By-Laws.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no

[18] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.4 (Election).

[19] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.7 (Disqualification).

[20] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.5. The current provision provides, in part, that ''[a]ny Director may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary.'' Under the proposed provision, notice of resignation must be submitted to the Chair of the Board or the Secretary.

[21] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.9(b) (Quorum and Voting).

[22] *See* proposed FINRA Regulation By-Laws, Article XI, Section 11.3(a) (Signatures). Under the current provision, ''[c]ertificates for shares of capital stock of FINRA Regulation shall be signed in the name of FINRA Regulation by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board.'' Under the proposal, certificates for shares of capital stock of FINRA Regulation shall be signed by two officers with one being the President or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board.

[23] *See* proposed FINRA Regulation By-Laws, Article XI, Section 11.3(b) (Signatures).

[24] *See* current FINRA Regulation By-Laws, Article XI, Section 11.4(a) (Stock Ledger).

[25] *See* Delaware General Corporation Law § 158.

[26] *See* proposed FINRA Regulation By-Laws, Article XI, Sections 11.4(a) (Stock Ledger) and 11.5(a) (Transfers of Stock).

[27] *See* FINRA Regulation By-Laws, Article IV, Sections 4.3(a) (Qualifications), 4.5 (Resignation), 4.11(c) (Meetings), 4.13(f) (Executive Committee), and 4.13(g) (Finance Committee). Section 141(c)(2) of the General Corporation Law of the State of Delaware provides that ''[t]he board of directors may designate 1 or more committees, each committee to consist of 1 or more *directors* of the corporation.'' (Emphasis Added). Committees of the board, therefore, may be comprised exclusively of board members. In addition, any committee of the board that is delegated any power and authority of the board, such as the Executive Committee, must be comprised exclusively of board members. *See* Delaware General Corporation Law, § 141(c)(2).

[28] *See* Delaware General Corporation Law, § 141(f).

[29] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.7(b) (Advisory Council).

later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[30] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and Section 15A(b)(4) of the Act,[31] which requires that FINRA rules be designed to assure a fair representation of FINRA's members in the administration of its affairs. The composition of the FINRA Board has previously been found to meet the statutory requirements, and FINRA believes that the proposed rule change will allow the representation of industry members, as well as public members, on the FINRA Regulation Board while enabling the FINRA Regulation Board to operate with a close connection to the FINRA Board. The remaining changes either conform to other changes made to the By-Laws or acknowledge current practices.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–020 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–FINRA–2009–020. 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 FINRA. 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–FINRA–2009–020 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7978 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[30] 15 U.S.C. 78*o*–3(b)(6).

[31] 15 U.S.C. 78*o*–3(b)(4).

[32] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59691; File No. SR–ISE–2009–16]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, LLC Relating to Amending the Fee Schedule

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend its Schedule of Fees with respect to equity transactions. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, the Exchange's Schedule of Fees for equity transactions includes a rebate of $0.0035 per share for orders that add liquidity in securities priced at or above $1.00 (excluding both order delivery and MidPoint Match orders) that are reported to Tape B. The Exchange is now proposing to lower that rebate from $0.0035 to $0.003 per share for orders that add liquidity in securities priced at or above $1.00 (excluding both order delivery and MidPoint Match orders) that are reported to Tape B. The Exchange is lowering this rebate in an effort to keep its pricing competitive with other exchanges. The aforementioned fee change will become operative on April 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, lowering the rebate in Tape B securities will allow the ISE's pricing to remain competitive with other exchanges.

*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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder. 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 No. SR–ISE–2009–16 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–2009–16 and should be submitted by April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7975 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59692; File No. SR–ISE–2009–17]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, LLC Relating to Amending the Direct Edge ECN Fee Schedule Applicable to International Securities Exchange Members

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Direct Edge ECN's (''DECN'') fee schedule for ISE Members to lower the rebate for orders that add liquidity on EDGX in securities priced at or above $1.00 that are reported to Tape B. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

**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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

On December 23, 2008, the ISE closed a transaction whereby, among other things, ISE Stock Exchange, LLC (''ISE Stock Exchange''), a Delaware limited liability company, merged with and into Maple Merger Sub, LLC (''Maple Merger Sub''), a Delaware limited liability company and a wholly owned subsidiary of Direct Edge Holdings LLC (''Direct Edge''), with Maple Merger Sub being the surviving entity.[3] As part of the same transaction, ISE Holdings purchased equity interests in Direct Edge such that subsequent to completing the transaction, ISE Holdings owns a 31.54% equity interest in Direct Edge. Following the closing of the transaction, the Commission deemed DECN to be a facility of the ISE, which would require ISE to file rules for DECN. However, the Commission granted ISE a temporary exemption from the rule filing requirements imposed by Section 19(b) of the Act, provided that ISE and DECN comply with certain conditions, including but not limited to, requiring ISE to file a proposed rule change if DECN's fee schedule is sought to be modified.[4]

Currently, DECN's fee schedule includes a rebate for ISE Members of $0.0035 per share for orders that add liquidity on EDGX in securities priced at or above $1.00 that are reported to Tape B. The Exchange is now proposing to lower that rebate from $0.0035 to $0.003 per share for orders that add liquidity on EDGX in securities priced at or above $1.00 that are reported to Tape B. The Exchange is lowering this rebate to keep its pricing consistent with the ISE Stock Exchange's Schedule of Fees. The aforementioned fee change will become operative on April 1, 2009.

[3] *See* Securities and Exchange Commission Release No. 34–59135 (December 22, 2008), 73 FR 79954 (December 30, 2008)(SR–ISE–2008–85) (Order approving a proposed rule change, as modified by Amendment No. 1, to purchase by International Securities Exchange Holdings, Inc. of an ownership interest in Direct Edge).

[4] The Commission notes that this exemption was granted, subject to certain conditions, to ISE with respect to DE ECN only, to allow DECN to operate as a facility of ISE without being subject to the rule filing requirements of Section 19(b) of the Act for a temporary period. *See* Exchange Act Release No. 59133 (December 22, 2008), 73 FR 79940 (December 30, 2009) (Order granting application for a temporary conditional exemption pursuant to Section 36(a) of the Act).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, lowering the rebate in Tape B securities will allow DECN's rebate to match the rebate provided on the ISE Stock Exchange.

*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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. 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 No. SR–ISE–2009–17 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–2009–17. 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–2009–17 and should be submitted by April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7976 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59669; File No. SR–Phlx–2009–24]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Increasing Linkage Inbound Principal Orders and Principal Acting as Agent Orders

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange''), 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 Exchange. On March 26, 2009, Phlx submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Equity Options Fees portion of its fee schedule relating to transaction fees applicable to the execution of Principal Acting as Agent Orders (''P/A Orders'') [3] and Principal Orders (''P Orders'') [4] sent to the Exchange via the Intermarket Options Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan'').[5]

Specifically, the Exchange will increase its transaction fees for P/A Orders from the current $0.15 per option contract to $0.30 per option contract, and for P Orders from the current $0.25 per option contract to $0.45 per contract.

This proposal is part of an existing pilot program, which is scheduled to expire July 31, 2009.[6]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to raise revenue for the Exchange by increasing the transaction charge for P/A Orders from the current $0.15 per option contract to $0.30 per option contract, and by increasing the transaction charge for P Orders from the current $0.25 per option contract to $0.45 per option contract.

Consistent with current practice, the Exchange will charge the clearing member organization of the sender of P Orders and P/A Orders. Also, consistent with current practice, the Exchange will not charge for the execution of Satisfaction Orders sent through Linkage.

The Exchange also proposes a technical amendment to the schedule of Equity Option Fees by correcting a typographical error, changing the word ''overlaying'' to read ''overlying.''

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2009–24 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A P/A Order is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i)

[4] A P Order is an order for the principal account of an Eligible Market Maker. *See* Exchange Rule 1083(k)(ii).

[5] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); (order approving the Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

[6] *See* Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR–Phlx–2008–49).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–24 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7865 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59673; File No. SR–NASDAQ–2009–031]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clerical Change to Nasdaq Rules

April 1, 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 March 26, 2009, The NASDAQ Stock Market LLC (''Nasdaq''), 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 Nasdaq. Nasdaq proposes to make a clerical correction to the Nasdaq rulebook under Rule 19b–4(f)(3) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to make clerical corrections to the Nasdaq rulebook. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

*7048.* [7047.] Nasdaq Custom Data Feeds

No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to make a clerical correction to the Nasdaq rulebook. Specifically, Nasdaq proposes to renumber Nasdaq Rule 7047 to Nasdaq Rule 7048. Nasdaq is renumbering this rule because Nasdaq has filed another proposed rule change that necessitates a renumbering of the existing Rule 7047. Nasdaq is making no changes to Rule 7047, other than to change the rule number to 7048.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change makes a minor clerical change to renumber an existing Nasdaq rule.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(3) thereunder,[8] Nasdaq has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, Nasdaq believes that its proposal should become immediately effective.

### 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–NASDAQ–2009–031 on the subject line.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(3).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.cchwallstreet.com/*.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

*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–NASDAQ–2009–031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2009–031 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7866 Filed 4–7–09; 8:45 am]

**BILLING CODE 1080–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59627; File No. SR–NYSEAmex–2009–02]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Formally Adopting and Codifying Its Wireless Data Communications Initiatives

April 2, 2009.

*Correction:* In FR Document No. E9–7291, published on Wednesday, April 1, 2009, beginning on page 14834, third column, first paragraph, fifth line, the name of the exchange is corrected to read ''NYSE Amex LLC''.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7973 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59695; File No. SR–DTC–2009–02]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Implement a Maturity Presentment Pend Function to Replace the Maturity Presentment Contingency System

April 2, 2009.

### I. Introduction

On January 13, 2009, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2009–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on February 19, 2009.[2] No comment letters were received on the proposal. This order approves the proposal.

### II. Description

The proposed rule change implements a Maturity Presentment Pend function (''IPA MP Pend Function'') that will replace the Maturity Presentment Contingency System.

*A. Current MMI Maturity Payment Procedure: Maturity Presentment Contingency System*

Currently, as part of DTC's Money Market Instrument (''MMI'') program maturity payment procedures, DTC sweeps maturing MMI positions from investors' custodians accounts and generates Maturity Presentments (''MPs'')[3] to the designated Issuing Agent or Paying Agent's (collectively, ''IPA'') accounts. DTC debits the IPA's account by the amount of the maturity proceeds for settlement that day and credits the same amount to the investor's custodian account for payment that day. Because MPs are processed against an IPA's DTC account, IPAs may refuse to pay for a specific issuer's MP in the event that the issuer defaults on its obligation to the IPA. DTC allows IPAs to enter refusal to pay notifications through the Participant Terminal System (''PTS'') until 3 p.m. Eastern Time on the date of maturity.[4]

Under extraordinary circumstances or in times of unusual market stress, DTC may use the Maturity Presentment Contingency System (''MPCS'') after consultation with the Commission on the days following a disaster to allow IPAs to review and manually release MPs. IPAs are able to release MPs for processing on a CUSIP or issuer acronym level basis. At the close of settlement, MPs that have not been released are rolled into the next business day's processing queue for presentation along with that day's scheduled obligations. This process continues until all maturities are funded and the IPA releases the MP, the IPA notifies DTC of its refusal to pay, or the MPCS contingency procedure is terminated.

*B. Proposed MMI Maturity Payment Procedure: Maturity Presentment Pend Function*

DTC is enhancing its systems in order to provide IPAs the ability to monitor their credit exposure to MMI issuers. DTC's IPA MP Pend Function will enable IPAs to review and manually release MPs in the ordinary course of business. IPAs will have the ability to set the pend request anytime prior to the MP sweep or at any point during the day for unknown rate maturities, based on acronym, product type, or the issuer MMI base CUSIP number. Each day by

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 59388 (Feb. 11, 2009), 74 FR 7714.

[3] References to MPs also cover other payment obligations of MMI issuers such as periodic payments and periodic interest payments.

[4] If the IPA refuses to pay, then DTC follows its Defaulting Issuer procedures, which include devaluing the collateral value of all of the defaulting issuer's MMI to zero, reversing all of the issuer's issuances and maturities processed that day, notifying DTC participants of the default, and blocking all further issuances by the issuer from entering DTC. If an IPA then contacts DTC to reverse the refusal to pay instruction, DTC undoes all the actions it took under its Defaulting Issuer procedures.

3 p.m. Eastern Time, the IPA will be required to (1) release all items held in pend or (2) invoke its right to refuse to pay.[5] If the IPA takes no action by 3 p.m. Eastern Time, the pending items will be released by DTC for normal processing.

All MP Pend requests will be time-stamped and will be immediately effective. Participants with MMI positions will be able to ascertain which MPs have been placed in pend status by the IPA.

Each time it uses the IPA MP Pend Function to create a pend request or make a change to its profile, the IPA will be required to represent and warrant that it has authority to submit the request appearing on the IPA's screen and that it will either release the items held in pend by 3 p.m. Eastern Time on the date of maturity or by such time communicate to DTC that it refuses to pay. Additionally, the IPA must acknowledge that it understands and agrees that all MPs will be released for normal processing if it does not communicate its intention to refuse to pay DTC by 3 p.m. Eastern Time. In extraordinary circumstances, DTC will maintain its ability to set the pend request based on an issuer acronym, product, program, base number, or globally for all IPAs or for individual IPAs. In all circumstances, the IPA will maintain its right to notify DTC of its refusal to pay.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),[6] which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–2009–02) be, and hereby is, approved.[9]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7977 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[5] The IPA MP Pend Function differs from the MPCS in this regard. Under the MPCS system, IPAs are not required to release items or invoke their right to refuse to pay each day since the MPs not acted on are rolled over into the next business day's processing queue.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59684; File No. SR–NYSE–2009–32]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend Until August 31, 2009, the Application of the NYSE Arca Transfer Standard

April 1, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 17, 2009, New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b–4(f)(6)[4] under the Exchange Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 102.01C of the Listed Company Manual (the ''Manual'') to extend until August 31, 2009, the application of the special initial listing standard applicable only to companies that are listed on NYSE Arca, Inc. (''NYSE Arca'').

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary and at the Commission's Public Reference room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Section 102.01C of the Manual includes an initial listing standard that is applicable only to companies that are listed on NYSE Arca, Inc. (''NYSE Arca'') as of October 1, 2008 and that transfer to the Exchange on or before March 31, 2009 (the ''NYSE Arca Transfer Standard'').[5] The NYSE Arca Transfer Standard was adopted in connection with NYSE Euronext's business strategy of consolidating its equities listings on two of the three U.S. registered securities exchanges it owns—the NYSE and NYSE Alternext US LLC. As part of this transition, the Exchange wished to offer the opportunity to list on the NYSE to all suitable NYSE Arca companies. Most companies currently listed on NYSE Arca would meet the NYSE's continued listing requirements set forth in Section 802.01B of the Manual for companies listed under the Exchange's Earnings Test.[6] However, a number of these companies that meet the NYSE's continued listing standards do not qualify to list under any of the existing

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 58741 (October 6, 2008), 73 FR 60378 (October 10, 2008) (SR–NYSE–2008–97).

[6] Companies listed under the Earnings Test are considered to be below compliance standards if their average global market capitalization over a consecutive 30-trading-day period is less than $75,000,000 and, at the same time, total stockholders' equity is less than $75,000,000. In addition Section 802.01B requires all listed companies to maintain a minimum of $25 million in global market capitalization and Section 802.01C requires all listed companies to maintain a $1.00 minimum stock price.

NYSE initial listing standards. In order to list these companies, the Exchange adopted the NYSE Arca Transfer Standard.[7]

At the time of initial adoption of the NYSE Arca Transfer Standard, the Exchange believed that all of the NYSE Arca companies that were suitable for NYSE listing would be able to transfer prior to March 31, 2009. However, due to the turbulent market conditions of recent months, a number of these companies have experienced significant reductions in their stock prices and, consequently, are not currently qualified for listing on the NYSE. Companies whose total market capitalization has fallen below $75 million are particularly problematic, as the NYSE Arca Transfer Standard requires companies to exceed this threshold for at least 90 consecutive days prior to applying for listing. Any company whose total market capitalization is currently below $75 million would not have sufficient time prior to March 31 to meet this requirement even if its total market capitalization exceeded $75 million on the date of this filing. In light of the extraordinary market conditions, the Exchange proposes to extend from March 31 to August 31, 2009, the life of the NYSE Arca Transfer Standard. The Exchange believes that this extension will enable companies to transfer from NYSE Arca to the NYSE that, but for the overall decline in the equities markets, would have qualified to transfer during the life of the NYSE Arca Transfer Standard as initially adopted.

The Exchange believes it is appropriate to extend the time period during which it can apply the NYSE Arca Transfer Standard as a short-term listing standard applicable only to NYSE Arca companies. These companies listed on NYSE Arca on the assumption that it would exist as a permanent listing market and it is solely because of a business decision made by NYSE Euronext that these companies will need to transfer their listings. Many of these companies listed on NYSE Arca because of its association with the NYSE and in the expectation that they would ultimately switch their listing to the NYSE when they met the NYSE's listing standards. As such, the Exchange believe that fairness dictates that it should seek to list these companies on the NYSE where such a listing is appropriate and in the interests of the investing public.

The NYSE will only list companies under the NYSE Arca Transfer Standard if it believes that those companies are suitable for trading on the NYSE. All of the companies that would be listed under the NYSE Arca Transfer Standard will far exceed the NYSE's continued listing standards at the time of initial listing and will be in compliance with NYSE Arca continued listing standards. In addition, the same staff in NYSE Regulation's Financial Compliance and Corporate Governance groups is responsible for ongoing compliance reviews of both NYSE and NYSE Arca companies. As such, the NYSE Regulation staff involved in making initial listing determinations on the NYSE is extremely familiar with the companies currently listed on NYSE Arca and is uniquely positioned to determine whether those companies are suitable for listing on the NYSE. The Exchange believes its depth of knowledge with respect to NYSE Arca companies makes it appropriate to list them on this one time basis under a less onerous standard than the Exchange applies to other listing applicants. Companies listing under the NYSE Arca Transfer Standard will be subject to the standard listing application and review process applicable to all listing applicants and, if Exchange staff determine that an NYSE Arca company is not suitable for listing on the NYSE—notwithstanding its qualification under the numerical requirements of the NYSE Arca Transfer Standard—the Exchange will not list that company.

The requirements of the NYSE Arca Transfer Standard exceed those established by Exchange Act Rule 3a51–1(a)(2) (the ''Penny Stock Rule'').[8] The NYSE Arca Transfer Standard's requirement that an applicant have $75 million in global market capitalization for 90 days prior to transferring from NYSE Arca exceeds the $50 million market capitalization for 90 days prior to listing option in the Penny Stock Rule, as well as the $50 million market capitalization requirement of Rule 3a51–1(a)(2)(i)(B). In addition, companies listing under the NYSE Arca Transfer Standard will be required at the time of transfer to have a $4 stock price, 400 round lot holders and 1.1 million publicly held shares, thereby meeting or exceeding all of the Penny Stock Rule's remaining requirements.

Companies listing under the NYSE Arca Transfer Standard will have to comply with all other applicable Exchange listing rules, including the Exchange's corporate governance requirements. As with all other listing applicants, the Exchange reserves the right to deny listing to any company seeking to list under the NYSE Arca Transfer Standard if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[9] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act[10] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the protection of investors and the public interest in that the requirements of the NYSE Arca Transfer Standard are sufficiently stringent that the proposed amendment will not lead to the listing of any companies that are not suited for listing on the NYSE. In addition, the proposal applies for a limited period to a small number of companies that are subject to unique and disadvantageous circumstances.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (i) Does not significantly affect the

[7] Companies transferring from NYSE Arca under the NYSE Arca Transfer Standard are required to have $75 million in total market capitalization for 90 consecutive days prior to applying for listing and $20 million in market value of publicly-held shares (but not the $100 million market value of publicly-held shares requirement of Section 102.01B). Such companies have to meet the holders, publicly-held shares and trading volume requirements set forth in Section 102.01A and the $4 stock price requirement of Section 102.01B.

[8] 17 CFR 240.a51–1(a)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the exchange to keep in place, without interruption, the operation of the NYSE Arca Transfer Standard.

The Commission expects that the Exchange will deny listing to any company seeking to list pursuant to the proposed rule change if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest. In accordance with the terms of the proposed rule, the Exchange will apply this standard only for the very narrow category of companies, listed on NYSE Arca as of October 1, 2008, that transfer to the Exchange on or before August 31, 2009. Since NYSE Regulation's Financial Compliance and Corporate Governance groups are responsible for ongoing compliance reviews of both NYSE and NYSE Arca companies, the Commission believes the Exchange should be sufficiently familiar with companies seeking to transfer to be able to determine if any such company is an appropriate transfer candidate. The Commission expects the NYSE to only list those NYSE Arca transfers which they believe, through their past expertise reviewing these companies, are suitable for trading on the NYSE and the maintenance of fair and orderly markets. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–32 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–32. 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 SR–NYSE–2009–32 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7870 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59685; File No. SR–NYSEAmex–2009–04]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Modify Its Annual Report Distribution Requirements

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b–4(f)(6) [3] under the Exchange Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the requirements of the Company Guide with respect to the distribution of annual reports. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

Office of the Secretary and at the Commission's Public Reference room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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. NYSE Amex 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

Section 610(a) of the Company Guide provides that a listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements prepared in conformity with the requirements of the SEC. The Exchange interprets this rule as requiring companies to physically distribute their annual reports to shareholders. The Exchange proposes to amend this requirement in response to the SEC's adoption of amendments to its proxy rules to permit the electronic delivery of financial statements.[4] Section 610(a) is also amended to conform its requirements to those of Section 203.01 of the NYSE's Listed Company Manual.

Under Section 610(a) as amended, any company listed on the Exchange that is required to file with the SEC an annual report that includes audited financial statements (including on Forms 10–K, 20–F, 40–F or N–CSR) will be required to simultaneously make such annual report available to shareholders of such securities on or through the company's Web site. A company must also post to its Web site a prominent undertaking in the English language to provide all holders (including preferred stockholders and bondholders) the ability, upon request, to receive a hard copy of the company's complete audited financial statements free of charge and simultaneously issue a press release stating that its annual report has been filed with the SEC. This press release must also specify the company's Web site address and indicate that shareholders have the ability to receive a hard copy of the company's complete audited financial statements free of charge upon request. The company must provide such hard copies within a reasonable period of time following the request. Moreover, the press release must be published pursuant to the Exchange's press release policy.[5]

A listed company that:

- Is subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10–K, 20–F and 40–F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a–3 and 14a–16 of the U.S. proxy rules, or
- Is an issuer not subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10–K, 20–F and 40–F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a–3 and 14a–16 of the U.S. proxy rules, will not be required to issue the press release or post the undertaking required above.[6] A company that fails to file its annual report on Forms 10–K, 20–F, 40–F or N–CSR with the SEC in a timely manner will be subject to delisting pursuant to Section 1002(d) of the Company Guide.

The Exchange proposes to eliminate the requirement of Section 610(a) that companies must provide three copies of their annual report to the Exchange. The Exchange relies on the publicly filed annual report available on EDGAR for all of its regulatory purposes and does not need to receive physical copies.

Section 110(a) of the Company Guide sets forth the Exchange's annual report requirements for foreign companies. Section 110(a) currently permits foreign companies to follow home country practices regarding the distribution of annual reports to shareholders, if, at a minimum, shareholders (i) are provided at least summary annual reports, including summary financial information, and (ii) have the ability, upon request, to receive a complete annual report, and the financial information contained in the summary annual report is reconciled to U.S. generally accepted accounting principles to the extent that such reconciliation would be required in the full annual report. The Exchange proposes to amend Section 110(a) to provide that foreign companies must comply with the requirements of Section 610(a) as amended. In doing so, the Exchange is conforming its annual report requirements applicable to foreign companies to those of the NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] Exchange Act in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to facilitate compliance with NYSE Amex rules by aligning NYSE Amex's disclosure requirements with those of the SEC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

[4] *See* Securities Exchange Act Release No. 56135 (July 26, 2007), 72 FR 42221 (August 1, 2007).

[5] *See* Section 401 of the Company Guide.

[6] The Commission notes that while the Exchange will not have independent undertakings for companies complying with Rules 14a–3 and 14a–16, these Commission rules do contain their own requirements for making a hard copy available in addition to other requirements.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Exchange Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Exchange Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that the NYSE recently adopted a substantially similar listing requirement governing the distribution of annual reports,[13] and the Commission believes that the NYSE Amex's proposed rule change raises no new regulatory issues. The Commission also notes that the NYSE's proposal was subject to full notice and comment, and the Commission received no comments on the NYSE's rule proposal. In addition, the Commission believes that waiving the 30-day operative delay will immediately give issuers that have just filed, or are about to file, their annual reports with the Commission the option to comply with NYSE Amex's distribution of annual reports requirement by satisfying the requirements for furnishing an annual report contained in Rules 14a–3 and 14a–16 under the Exchange Act. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 Exchange Act.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Exchange Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 59123 (December 19, 2008), 73 FR 7991 (December 30, 2008) (SR–NYSE–2008–128).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

## 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–NYSEAmex–2009–04 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–NYSEAmex–2009–04. 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 SR–NYSEAmex–2009–04 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7871 Filed 4–7–09; 8:45 am]

**BILLING CODE 8010–01–P**

[15] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Region II Buffalo District Advisory Council Public Meeting

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal advisory committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Region II Buffalo District Advisory Council. The meeting will be open to the public.

**DATES:** The meeting will be held on April 22, 2009 from approximately 9:30 a.m. to 11:30 a.m. Eastern Standard Time.

**ADDRESSES:** The meeting will be held at the Park Country Club, 2929 Sheridan Drive, Williamsville, New York 14202.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Region II Buffalo District Advisory Council. The Region II Buffalo District Advisory Council is tasked with providing information of public interest.

The purpose of the meeting is so the council can provide advice and opinions regarding the effectiveness of and need for SBA programs, particularly the local districts which members represent. The agenda will include: District office, SBA programs and services, ARRA, government contracting, disaster updates, lending activity reports, small business week, event announcements, and roundtable discussion on small business issues.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Region II Buffalo District Advisory Council must contact Franklin J. Sciortino, District Director, Buffalo District Office by October 10, by fax or e-mail, in order to be placed on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood

Avenue, Buffalo, New York 14202; telephone (716) 551–4301 or fax (716) 551–4418.

Additionally, if you need accommodations because of a disability or require additional information, please contact Kelly Lotempio, BDS/PIO, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551–4301, *kelly.lotempio@sba.gov* or fax (716) 551–4418.

For more information, please visit our Web site at *http://www.sba.gov/ny/buffalo*.

Dated: March 31, 2009.

**Bridget E. Bean,**

*Deputy Associate Administrator for Field Operations.*

[FR Doc. E9–7880 Filed 4–7–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[License No. 01/01–0414]**

### Ironwood Mezzanine Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Ironwood Mezzanine Fund II, L.P. 200 Fisher Drive, Avon, CT 06001–3723, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Ironwood Mezzanine Fund II, L.P. proposes to provide debt/equity security financing to Action Carting Environmental Services, Inc., 451 Frelinghuysen Avenue, Newark, NJ 07114. The financing is contemplated as part of $6 million debt/equity issuance, the proceeds of which will be used primarily pay down the outstanding revolver and equipment debt.

The financing is brought within the purview of § 107.730(a) of the Regulations because Ironwood Equity Fund, L.P., an Associate of Ironwood Mezzanine Fund II, L.P., owns more than ten percent of Action Carting Environmental Services, Inc., and this transaction is considered a Financing of an Associate requiring an exemption to the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: March 23, 2009.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. E9–7879 Filed 4–7–09; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 6572]**

### Determination To Transfer Title of Selected Aircraft to the Government of Colombia

Pursuant to section 484(a)(2) of the Foreign Assistance Act, as amended (''the Act'') and section 1–100(a)(1) of Executive Order No. 12163, I hereby determine that section 484(a)(1) of the Act (which requires that the United States retain title to aircraft made available to foreign countries primarily for narcotics-related purposes) should not apply to: Six (6) Bell UH–1N helicopters; and one (1) T–65 Ayres spray airplane, because retention of title to these aircraft would be contrary to the national interest of the United States.

This determination, together with the Memorandum of Justification and aircraft inventory, shall be reported to the Congress, and published in the **Federal Register**.

Dated: February 26, 2009.

**Hillary Rodham Clinton,**

*Secretary of State, Department of State.*

[FR Doc. E9–7972 Filed 4–7–09; 8:45 am]

**BILLING CODE 4710–17–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 28, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2009–0076.

*Date Filed:* March 26, 2009.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 16, 2009.

*Description:* Application of DHL Air Limited requesting a foreign air carrier permit and an exemption authorizing it to engage in: (a) Scheduled and charter foreign air transportation of property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) scheduled and charter foreign air transportation of property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) scheduled and charter foreign air transportation of property and mail between any point or points in the United States and any point or points; (d) other charters pursuant to the prior approval requirements; and (e) transportation authorized by any additional route rights made available to European community carriers in the future.

**Barbara J. Hairston,**

*Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.*

[FR Doc. E9–7961 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending March 28, 2009

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT–OST–2009–0073.

*Date Filed:* March 23, 2009.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC1 Caribbean, Longhaul, Within South America Flex Fares

Package—Resolutions (Memo 0391). Intended effective date: 1 July 2009.

**Barbara J. Hairston,**

*Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.*

[FR Doc. E9–7962 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighth Meeting, Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries

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

**ACTION:** Notice of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

**DATES:** The meeting will be held April 22–23, 2009 from 9 a.m.–5 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036, MacIntosh NBAA and Hilton ATA Rooms.

**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* for directions.

**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 Special Committee 211 meeting. The agenda will include:

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).
- Review/Approval of the Seventh Meeting Summary, RTCA Paper No. 087–09/SC211–019.
- Discuss steps necessary to incorporate NiMh technology into DO–293 as requested by the FAA.
- Address other changes proposed for DO–293 based on MOPS usage experience.
- Address other changes proposed for DO–311 based on MOPS usage experience.
- Closing Plenary Session (Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting, 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 April 1, 2009.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E9–7911 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 USC 327.

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*) (1). The actions relate to a proposed highway project, Interstate-405 at Avalon Boulevard Interchange Improvement Project (post mile 10.8 to 11.4) in the City of Carson, County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, 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 October 5, 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:** Eduardo Aguilar, Branch Chief/Senior Environmental Planner, Caltrans, District 7, Division of Environmental Planning, 100 South Main Street, Suite 100, Los Angeles, CA 90012–3712, (213) 897–8492, *eduardo_aguilar@dot.ca.gov*.

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327.

Notice is hereby given that the Caltrans, have 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 California: Caltrans and the City of Carson propose to improve the configuration of the I–405/Avalon Boulevard interchange (post mile 10.8 to 11.4) in the City of Carson, County of Los Angeles. The proposed improvements would: (1) Realign and improve existing ramps in three of the intersection quadrants; (2) add a new ramp in the fourth (i.e., southeast) quadrant, which would link Lenardo Drive and Avalon Boulevard to the freeway at a widened 213th Street bridge; (3) link the interchange to Lenardo Drive on the adjacent Carson Marketplace site with a bridge over the Torrance Lateral flood control channel, and (4) widen Avalon Boulevard to accommodate change in the ramps configuration. A public meeting was held on regarding the proposed project on Tuesday, August 12, 2008 at the City of Carson Community Center, Room 123, in Carson, California. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Finding of No Significant Impact (FONSI) for the project, approved on March 18, 2009. The FONSI and other project records are available for review by contacting Caltrans at the addresses provided above. The Caltrans FONSI can be viewed and downloaded from the Caltrans District 7 environmental document Web site at *http://www.dot.ca.gov/dist07/resources/envdocs/*.

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:

—*General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].

—*Land:* Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 219].

—*Air:* Clean Air Act 42 U.S.C. 7401–7671(q).

—*Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

—Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].

—*Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended

[16 U.S.C. 470(aa)–11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

—*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 (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, as amended.

—*Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992 (k).

—*Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1)

Issued on: April 1, 2009.

**Cindy Vigue,**

*Director, State Programs, Federal Highway Administration, Sacramento, California.*

[FR Doc. E9–7935 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[FHWA Docket No. FHWA–2005–23112]**

### Motorcyclist Advisory Council to the Federal Highway Administration

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of meeting of advisory committee.

**SUMMARY:** This document announces the sixth meeting of the Motorcyclist Advisory Council to the Federal Highway Administration (MAC–FHWA). The purpose of this meeting is to advise the Secretary of Transportation, through the Administrator of the Federal Highway Administration, on infrastructure issues of concern to motorcyclists, including (1) barrier design; (2) road design, construction, and maintenance practices; and (3) the architecture and implementation of intelligent transportation system technologies, pursuant to section 1914 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

**DATES:** The sixth meeting of the MAC–FHWA is scheduled for May 7, 2009, from 9 a.m. until 5 p.m.

**ADDRESSES:** The sixth MAC–FHWA meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Griffith, the Designated Federal Official, Office of Safety, 202–366–2288, (*mike.griffith@dot.gov*), or Dr. Morris Oliver, Office of Safety, 202–366–2288, (*morris.oliver@dot.gov*), Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Section 1914 of SAFETEA–LU mandates the establishment of the Motorcyclist Advisory Council as follows: ''The Secretary, acting through the Administrator of the Federal Highway Administration, in consultation with the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, shall appoint a Motorcyclist Advisory Council to coordinate with and advise the Administrator on infrastructure issues of concern to motorcyclists, including—

(1) Barrier design;

(2) Road design, construction, and maintenance practices; and

(3) The architecture and implementation of intelligent transportation system technologies.''

In addition, section 1914 specifies the membership of the council: ''The Council shall consist of not more than 10 members of the motorcycling community with professional expertise in national motorcyclist safety advocacy, including—

(1) At least—

(A) One member recommended by a national motorcyclist association;

(B) One member recommended by a national motorcycle rider's foundation;

(C) One representative of the National Association of State Motorcycle Safety Administrators;

(D) Two members of State motorcyclists' organizations;

(E) One member recommended by a national organization that represents the builders of highway infrastructure;

(F) One member recommended by a national association that represents the traffic safety systems industry; and

(G) One member of a national safety organization; and

(2) At least one, and not more than two, motorcyclists who are traffic system design engineers or State transportation department officials.''

To carry out this requirement, the FHWA published a notice of intent to form an advisory committee in the **Federal Register** on December 23, 2005 (70 FR 76353). This notice, consistent with the requirements of the Federal Advisory Committee Act (FACA), announced the establishment of the Council and invited comments and nominations for membership. The FHWA announced the ten members selected to the Council in the **Federal Register** on October 5, 2006 (71 FR 58903). An electronic copy of this document and the previous **Federal Register** notices associated with the MAC–FHWA can be downloaded through the Federal eRulemaking Portal at: *http://www.regulations.gov* and the Office of the Federal Register's home page at: *http://www.archives.gov/federal_register*.

The FHWA anticipates that the MAC–FHWA will meet at least once a year, with meetings held in the Washington, DC metropolitan area and the FHWA will publish notices in the **Federal Register** to announce the times, dates, and locations of these meetings. Meetings of the Council are open to the public, and time will be provided in each meeting's schedule for comments by members of the public. Attendance will necessarily be limited by the size of the meeting room. Members of the public may present oral or written comments at the meeting or may present written materials by providing copies to Ms. Fran Bents, Westat, 1650 Research Boulevard, Rockville, MD 20850–3195, (240) 314–7557, ten (10) days prior to the meeting.

The agenda topics for the meetings will include a discussion of the

following issues: (1) Barrier design; (2) road design, construction, and maintenance practices; and (3) the architecture and implementation of intelligent transportation system technologies.

**Conclusion**

The sixth meeting of the Motorcyclist Advisory Council to the Federal Highway Administration will be held on May 7, 2009, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202 from 9 a.m. until 5 p.m.

**Authority:** Section 1914 of Public Law 109–59; Public Law 92–463, 5 U.S.C., App. II § 1.

Issued on: April 1, 2009.

**Jeffery F. Paniati,**

*Federal Highway Acting Deputy Administrator.*

[FR Doc. E9–7886 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0321]**

### Agency Information Collection Activities; Revision of Two Currently Approved Information Collection Requests: OMB Control Numbers 2126–0032 and 2126–0033 (Financial and Operating Statistics for Motor Carriers of Property)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces FMCSA's plan to submit to the Office of Management and Budget (OMB) its request to revise two currently approved information collection requests (ICRs) as follows: (1) OMB Control Number 2126–0032 entitled, *''Annual Report of Class I and Class II Motor Carriers of Property (formerly OMB 2139–0004),''* and (2) OMB Control Number 2126–0033 entitled, *''Quarterly Report of Class I Motor Carriers of Property (formerly OMB 2139–0002).''* These ICRs are necessary to ensure that motor carriers comply with FMCSA's financial and operating statistics requirements at chapter III of title 49 CFR part 369 entitled, *''Reports of Motor Carriers.''* The agency invites public comment on this information collection request.

**DATES:** We must receive your comments on or June 8, 2009.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2008–0321 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, 20590–0001, between 9 a.m. and 5 p.m., e.t., 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 20590–0001, 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 acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them 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** on April 11, 2000 (65 FR 19476). This information is also available at *http://docketsinfo.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vivian Oliver, Office of Research and Information Technology, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone: 202–366–2974; e-mail *Vivian.Oliver@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Annual Report of Class I and Class II Motor Carriers of Property (Form M) and the Quarterly Report of Class I Motor Carriers of Property (Form QFR) are mandated reporting requirements for all for-hire motor carriers. See 49 U.S.C. 14123; and implementing FMCSA regulations at 49 CFR part 369. The Secretary of Transportation (Secretary) has exercised his discretion under section 14123 to also require Class I property carriers (including dual-property carriers), Class I household goods carriers and Class I passenger carriers to file quarterly reports. Motor carriers (including interstate and intrastate) subject to the Federal Motor Carrier Safety Regulations are classified on the basis of their gross carrier operating revenues.[1]

Under the F&OS program, FMCSA collects from Class I and Class II property carriers balance sheet and income statement data along with information on safety needs, tonnage, mileage, employees, transportation equipment, and other related data. FMCSA may also ask carriers to respond to surveys concerning their operations. The data and information collected would be made publicly available and used by FMCSA to determine a motor carrier's compliance with the F&OS program requirements prescribed at chapter III of title of 49 CFR part 369.

The regulations were formerly administered by the Interstate Commerce Commission and later transferred to the Secretary on January 1, 1996, by section 103 of the ICC Termination Act of 1995 (Pub. L.104–88, 109 Stat. 803 (Dec. 29, 1995)), now codified at 49 U.S.C. 14123. On September 30, 1998, the Secretary delegated and transferred the authority to administer the F&OS program to the former Bureau of Transportation Statistics (BTS), now part of the Research and Innovative Technology Administration (RITA), to former chapter XI, subchapter B of 49 CFR part 1420 (63 FR 52192).

On September 29, 2004, the Secretary transferred the responsibility for the F&OS program from BTS to FMCSA in the belief that the program was more

[1] For purposes of the F&OS program, carriers are classified into the following three groups: (1) Class I carriers are those having annual carrier operating revenues (including interstate and intrastate) of $10 million or more after applying the revenue deflator formula as set forth in Note A of 49 CFR 369.2; (2) Class II carriers are those having annual carrier operating revenues (including interstate and intrastate) of at least $3 million, but less than $10 million after applying the revenue deflator formula as set forth in 49 CFR 369.2; and (3) Class III carriers are those having annual carrier operating revenues (including interstate and intrastate) of less than $3 million after applying the revenue deflator formula as set forth in Note A of 49 CFR 369.2.

aligned with FMCSA's mission and its other motor carrier responsibilities (69 FR 51009). On August 10, 2006, the Secretary published a final rule (71 FR 45740) that transferred and redesignated certain motor carrier financial and statistical reporting regulations of BTS, that were formerly located at chapter XI, subchapter B of title 49 CFR part 1420, to FMCSA under chapter III of title 49 CFR part 369.

*Title:* Annual Report of Class I and Class II Motor Carriers of Property (formerly OMB Control Number 2139–0004).

*New OMB Control Number:* 2126–0032.

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

*Respondents:* Class I and Class II Motor Carriers of Property.

*Estimated Number of Respondents:* 372 (per year).

*Estimated Time per Response:* 9 hours.

*Expiration Date:* June 30, 2009.

*Frequency of Response:* Annually.

*Estimated Total Annual Burden:* 3,348 hours [372 respondents × 9 hours to complete form = 3,348].

*Title:* Quarterly Report of Class I Motor Carriers of Property (formerly OMB Control Number 2139–0002).

*New OMB Control Number:* 2126–0033.

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

*Respondents:* Class I Motor Carriers of Property.

*Estimated Number of Respondents:* 120.

*Estimated Time per Response:* 1.8 hours (27 minutes per quarter).

*Expiration Date:* June 30, 2009.

*Frequency of Response:* Quarterly.

*Estimated Total Annual Burden:* 216 hours [120 respondents × 1.8 hours to complete forms = 216].

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed information collection is necessary for FMCSA to perform its mission; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued on: March 31, 2009.

**Terry Shelton,**

*Associate Administrator for Research and Information Technology.*

[FR Doc. E9–7908 Filed 4–7–09; 8:45 am]

**BILLING CODE 4910–EX–P**

Federal Register

Wednesday,
April 8, 2009

Part II

# Department of Energy

**10 CFR Part 430**

**Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers); Final Rule**

**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

**[Docket Number: EERE–2006–STD–0127]**

**RIN 1904–AB49**

## Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is announcing that it is amending energy conservation standards pertaining to the cooking efficiency of residential gas kitchen ranges and ovens, because it has determined that such standards would be technologically feasible and economically justified and would result in significant conservation of energy, the three primary statutory criteria for adoption of standards under the Energy Policy and Conservation Act (EPCA). DOE is not adopting energy conservation standards pertaining to the cooking efficiency of residential electric kitchen ranges and ovens and microwave ovens, because it has determined that such standards would not be technologically feasible and economically justified. At this point, DOE has decided to defer its decision regarding adoption of amended energy conservation standards for the energy efficiency of commercial clothes washers and standby mode and off mode power consumption by microwave ovens, pending further rulemaking. Finally, DOE is not adopting amended standards for dishwashers and dehumidifiers in this rulemaking, because recent amendments to EPCA have already set standards for those products.

**DATES:** The effective date of this rule is June 8, 2009. Compliance with the standards set by today's final rule is required on April 9, 2012.

**ADDRESSES:** For access to the docket to read background documents, the technical support document, transcripts of the public meetings in this proceeding, 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. You may also obtain copies of certain previous rulemaking documents in this proceeding (*i.e.,* framework document, advance notice of proposed rulemaking, notice of proposed rulemaking), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/cooking_products.html*

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7463. E-mail: *Stephen.Witkowski@ee.doe.gov*.

Mr. Eric Stas or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov* or *Michael.Kido@hq.doe.gov*.

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## I. Summary of the Final Rule

### *A. The Standard Levels*

DOE notes that this rulemaking originally bundled four separate residential and commercial products (dishwashers, dehumidifiers, electric and gas kitchen ranges and ovens and microwave ovens, and commercial clothes washers). However, as explained in further detail below, various events occurred during the course of the rulemaking which resulted in the consideration of a number of these products separately. For example, Congress set efficiency levels by statute for dishwashers and dehumidifiers, which DOE codified in its regulations through a separate rulemaking (along with numerous other statutory changes). At the notice of proposed rulemaking (NOPR) stage, public commenters made DOE aware of problems with the efficiency data for certain commercial clothes washer models upon which DOE had relied in its analyses. For microwave ovens, public commenters urged DOE to await the impending finalization of the industry standard for measurement of microwave oven standby mode and off mode power consumption before adopting a corresponding DOE test procedure (a prerequisite for an energy conservation standard addressing standby power). DOE believes that both of these developments warrant further rulemaking action. For these reasons, today's final rule is limited to addressing energy conservation standards for the cooking efficiency of electric and gas kitchen ranges and ovens and microwave ovens.

#### 1. Statutorily Set Standard Levels for Dehumidifiers and Dishwashers

As explained in detail in the NOPR in this proceeding, the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*; EPCA or the Act), initially contained energy conservation standards for dehumidifiers and residential dishwashers, as well as requirements for DOE to amend those standards, and DOE announced it would consider such amendments to those standards in this rulemaking. 73 FR 62034, 62036–40 (Oct. 17, 2008) (the October 2008 NOPR). However, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law No. 110–40, subsequently amended these EPCA provisions in two ways pertinent here. First, EISA 2007 prescribed efficiency standards for dehumidifiers manufactured on or after October 1, 2012 and removed the requirement for a rulemaking to amend the EPCA standards for this product. Second, EISA 2007 prescribed maximum energy and water use levels for residential dishwashers manufactured on or after January 1, 2010, and required completion of a final rule no later than January 1, 2015 to consider amendment of these dishwasher standards. 73 FR 62034, 62038–40 (Oct. 17, 2008). (EISA 2007, section 311(a)(1)–(2); 42 U.S.C. 6295(g)(10) and (cc)) DOE notes that although EISA 2007 did not formally remove the requirement to conduct the current rulemaking, the statutory standards for dishwashers are to become effective well before the effective date of any amended standards that would have arisen from the present rulemaking. Consequently, DOE has not conducted further analysis in this rulemaking of standards for dehumidifiers and residential dishwashers. 73 FR 62034, 62040 (Oct. 17, 2008). Instead, DOE has incorporated into its regulations all of the energy conservation standards prescribed by EISA 2007 for various products and equipment, including those for dehumidifiers and residential dishwashers, in a separate rulemaking notice. 74 FR 12058 (March 23, 2009).

#### 2. The Standard Levels for the Energy Efficiency of Residential Cooking Products

Pursuant to EPCA, any amended energy conservation standard that DOE prescribes for cooking products [1] or commercial clothes washers (collectively referred to in this final rule as ''the two appliance products'') must be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A) and 6316(a)) Furthermore, the new standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(a)) In today's final rule, DOE has decided to adopt amended energy conservation standards pertaining to the cooking efficiency of residential gas kitchen ranges and ovens pursuant to these criteria. Today's final rule requires that residential gas kitchen ranges and ovens without an electrical supply cord manufactured after April 9, 2012 must not be equipped with a constant burning pilot light. DOE has decided not to adopt energy conservation standards pertaining to the cooking efficiency of residential electric kitchen ranges and ovens and microwave ovens. As explained in further detail below, no cooking efficiency standards for these products were found to be technologically feasible and economically justified.

#### 3. Further Rulemaking for Commercial Clothes Washers and Microwave Ovens

DOE has decided to defer its decision regarding whether to adopt amended energy conservation standards for the energy efficiency of commercial clothes washers (CCWs) and for the standby mode and off mode power consumption of microwave ovens, pending further rulemaking. The reasons for DOE's decision are summarized below.

In the October 2008 NOPR, DOE tentatively concluded for CCWs that a standard of 1.76 modified energy factor (MEF) and 8.3 water consumption factor (WF) for top-loading CCWs and a standard of 2.0 MEF and 5.5 WF for front-loading CCWs are technologically feasible and economically justified. 73 FR 62034, 62036 (Oct. 17, 2008). As

[1] The term ''cooking products'' as used in this notice refers to residential electric and gas kitchen ranges and ovens, including microwave ovens.

discussed in more detail in section II.B.3, DOE received comments on the October 2008 NOPR that questioned the validity of the maximum technologically feasible (max-tech) level that was used in the analysis of top-loading CCWs. DOE has concluded that additional information is required to verify whether the max-tech level specified in the NOPR is appropriate.

Likewise, the October 2008 NOPR tentatively concluded that a standard for microwave oven standby mode and off mode energy consumption would be technologically feasible and economically justified. Therefore, concurrent with the standards NOPR, DOE published in the **Federal Register** a test procedure NOPR for microwave ovens to provide for the measurement of standby mode and off mode power consumption by these products. 73 FR 61134 (Oct. 17, 2008). As discussed in section II.B.3, DOE received comments on the October 2008 NOPR that objected to certain definitions that were included in the proposed microwave oven test procedure amendments. The commenters supported the incorporation of definitions provided in a revision of an industry standard for measuring standby power consumption expected to be completed later this year. DOE has concluded that it should defer consideration of microwave oven energy conservation standards until the revised industry standard becomes available for consideration in the microwave oven test procedure amendments.

DOE intends to complete the rulemaking process for these products and equipment as expected once additional key data and information become available, keeping in mind the relevant statutory deadlines. As discussed in the October 2008 NOPR, 73 FR 62034, 62041 (Oct. 17, 2008), the EISA 2007 amendments to EPCA require DOE to amend the ranges and ovens and microwave oven test procedure to incorporate standby and off mode energy consumption no later than March 31, 2011. (42 U.S.C. 6295(gg)(2)(B)(vi)) For CCWs, EPCA requires that DOE issue a final rule by January 1, 2010, to determine whether the existing energy conservation standards should be amended. (42 U.S.C. 6313(e)(2)(A))

*B. Current Federal Standards*

DOE established the current energy conservation standards for dishwashers manufactured on or after May 14, 1994, in a final rule published in the **Federal Register** on May 14, 1991 (56 FR 22250). These standards include a requirement that the energy factor (EF) of a standard-size dishwasher must not be less than 0.46 cycles per kilowatt-hour (kWh) and that the EF of a compact-size dishwasher must not be less than 0.62 cycles per kWh. (10 CFR 430.32(f)) Section 311(a)(2) of EISA 2007 established maximum energy and water use levels for dishwashers manufactured on or after January 1, 2010. (42 U.S.C. 6295(g)(10)) Under the amended statute, a standard-size dishwasher shall not exceed 355 kWh/year and 6.5 gallons of water per cycle, and a compact-size dishwasher shall not exceed 260 kWh/year and 4.5 gallons of water per cycle.

EPCA, as amended by the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, prescribes the current energy conservation standard for dehumidifiers, shown in Table I.1. (42 U.S.C. 6295(cc)(1); 10 CFR 430.32(v)) Section 311(a)(1) of EISA 2007 amended EPCA to prescribe minimum efficiency levels for dehumidifiers manufactured on or after October 1, 2012. (42 U.S.C. 6295(cc)(2))

TABLE I.1—FEDERAL STANDARDS FOR RESIDENTIAL DEHUMIDIFIERS

| EPACT 2005 standards effective October 1, 2007 | | EISA 2007 standards effective October 1, 2012 | |
|---|---|---|---|
| Dehumidifier capacity *pints/day* | EF *liters/kWh* | Dehumidifier capacity *pints/day* | EF *liters/kWh* |
| 25.00 or less | 1.00 | Up to 35.00 | 1.35 |
| 25.01–35.00 | 1.20 | 35.01–45.00 | 1.50 |
| 35.01–54.00 | 1.30 | 45.01–54.00 | 1.60 |
| 54.01–74.99 | 1.50 | 54.01–75.00 | 1.70 |
| 75.00 or more | 2.25 | Greater than 75.00 | 2.5 |

EPCA prescribes the current energy conservation standard for cooking products, which includes a requirement that gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990, not be equipped with a constant burning pilot light. (42 U.S.C. 6295(h)(1); 10 CFR 430.32(j)) Currently, no mandatory Federal energy conservation standards exist for conventional electric ranges and ovens or for microwave ovens.

EPCA also prescribes standards for CCWs manufactured on or after January 1, 2007, requiring that CCWs have an MEF of at least 1.26 and a WF of not more than 9.5. (42 U.S.C. 6313(e)(1); 10 CFR 431.156)

*C. Benefits and Burdens to Purchasers of Cooking Products*

In the October 2008 NOPR, DOE considered the impacts on consumers of several trial standard levels (TSLs) related to the cooking efficiency of conventional cooking products and microwave ovens. 73 FR 62034, 62037, 62084–90 (Oct. 17, 2008). In the October 2008 NOPR, DOE tentatively concluded that none of the TSLs for microwave oven cooking efficiency were economically justified. 73 FR 62034, 62119 (Oct. 17, 2008). DOE has reached the same conclusion in today's final rule. Therefore, at this time, DOE is not adopting standards for microwave oven cooking efficiency (EF), so there will be no positive or negative impacts on purchasers of these products.

Also in the October 2008 NOPR, DOE determined that at TSL 1, the economic impacts (*i.e.,* the average life-cycle cost (LCC) savings) on consumers of the proposed standards for conventional cooking products would be positive. (TSL 1 prohibits constant burning pilots for gas appliances but does not change standards for the other product classes.) DOE has reached the same conclusion in today's final rule. Table I.2 presents the impacts on consumers of the energy conservation standards adopted in today's final rule.

TABLE I.2—IMPLICATIONS OF AMENDED STANDARDS FOR CONSUMERS

| | Gas cooktops | Gas standard ovens |
|---|---|---|
| New average installed cost | $332 | $464. |
| Estimated installed cost increase | $22 | $34. |
| Lifetime operating cost savings | $37 | $43. |
| Average payback period | 3.3 years | 7.0 years. |

The typical baseline gas cooktop has an installed price of $310 and an average lifetime operating cost of $561, resulting in a total life-cycle cost of $871. To meet the new standards, DOE estimates that the installed price of this product will be $332, an increase of $22. This price increase will be offset by lifetime operating cost savings of $37, resulting in life-cycle cost savings of $15. For gas standard ovens, the typical baseline product has an installed price of $430 and an annual average lifetime operating cost of $406, resulting in a total life-cycle cost of $836. To meet the new standards, DOE estimates that the installed price of this product will be $464, an increase of $34. This price increase will be offset by lifetime operating cost savings of $43, resulting in life-cycle cost savings of $9.

For the subgroup of consumers who do not have access to the electrical grid or whose religious and cultural practices prohibit the use of grid electricity, the amended standards would require use of technologies (*e.g.,* a battery-powered spark-ignition device) that have not yet been certified to meet applicable safety standards. See 42 U.S.C. 6295(o)(2)(B)(i)(VII) and 10 CFR part 430, subpart C, appendix A, sections 4(a)(4)(i) and (iv), and 5(b)(1) and (4). (See sections III.C.2 and VI.D.2 of this notice for further discussion.) Based on its research, DOE expects that certification of such technologies under applicable safety standards will likely be completed when these standards become effective.

*D. Impact on Manufacturers*

Using a real corporate discount rate of 7.2 percent, DOE estimates the industry net present value (INPV) in 2006$ of the gas cooktop, gas oven, and microwave oven industries to be $288 million, $469 million, and $1.46 billion, respectively, in the absence of new or amended standards. DOE estimates the impact of the cooking efficiency standards adopted in today's final rule on the INPV of manufacturers of these products to be between a 1.73-percent loss and a 4.11-percent loss (−$5 million to −$12 million) for gas cooktop manufacturers and between a 1.56-percent loss and a 2.10-percent loss (−$7 million to −$10 million) for gas oven manufacturers. Because DOE is not adopting standards for cooking efficiency of conventional electric cooking products or microwave ovens (and because consideration of a standby mode and off mode standard for microwave ovens has been deferred), this final rule will have no net impact on manufacturers of these products.

Based on DOE's interviews with manufacturers of cooking products and on comments received on the October 2008 NOPR, DOE determined that two small businesses that manufacture gas cooking products could be disproportionately affected by standards. (See section VII.B of this notice for further discussion.)

*E. National Benefits*

DOE estimates the standards will save approximately 0.14 quads (quadrillion ($10^{15}$) British thermal units (BTU)) of energy over 30 years (2012–2042). This is equivalent to 2.9 days of U.S. gasoline use.

By 2042, DOE expects the energy savings from the standards to eliminate the need for approximately 62 megawatts (MW) of generating capacity.[2] These energy savings will result in cumulative (undiscounted) greenhouse gas emission reductions of approximately 13.7 million tons (Mt) of carbon dioxide ($CO_2$). Based on a methodology developed during 2008, these emission reductions were estimated to represent domestic benefits of $0 to $109 million using a 7-percent discount rate and $0 to $241 million using a 3-percent discount rate, cumulative from 2012 to 2042 in 2007$. The methodology used to develop these estimates is now under review.

Additionally, the standards will help alleviate air pollution by resulting in approximately 6.1 kilotons (kt)) of nitrogen oxides ($NO_X$) cumulative emission reductions at the sites where appliances are used from 2012 through 2042. In addition, the standards would result in power plant $NO_X$ emissions reductions of 0.6 kt from 2012 to 2042. The total $NO_X$ emissions reductions at these locations would be an amount equal to $0.7 to $7.3 million using a 7-percent discount rate and $1.5 to $15.4 million using a 3-percent discount rate, in 2006$. The standards would also possibly result in power plant mercury (Hg) emissions reductions of up to 0.15 tons (t) from 2012 to 2042, or an amount equal to $0 to $1.3 million using a 7-percent discount rate and $0 to $2.6 million using a 3-percent discount rate, in 2006$.

The national NPV of the standards is $254 million using a 7-percent discount rate and $706 million using a 3-percent discount rate, cumulative from 2012 to 2042 in 2006$. This is the estimated total value of future savings minus the estimated increased equipment costs, discounted to 2007.

The benefits and costs of today's final rule to the Nation can also be expressed in terms of annualized [2006$] values over the forecast period (2012 through 2042). Using a 7-percent discount rate for the annualized cost analysis, the cost of the standards established in today's final rule is $17 million per year in increased product and installation costs, while the annualized benefits are $37 million per year in reduced product operating costs. Using a 3-percent discount rate, the cost of the standards established in today's final rule is $28 million per year and the benefits are $85 million per year.

*F. Conclusion*

DOE has evaluated the benefits (energy savings, consumer LCC savings, positive national NPV, and emissions reductions) to the Nation of amended energy conservation standards for gas cooking products and of new cooking efficiency standards for conventional electric cooking products and microwave ovens, as well as the costs of such standards (loss of manufacturer INPV and consumer LCC increases for some users of the cooking products). Based on all available information, DOE has determined that the benefits to the

[2] Because the amended standards affect solely residential gas consumption, the installed power plant generating capacity change represents only 0.005 percent of the total installed generating capacity forecasted for the year 2030. Therefore, both the installed capacity change and its associated emission reductions are negligible. Although effectively negligible, installed generation capacity and emission impacts are still reported in section VI of today's final rule for TSL 1 (the amended standards).

Nation of the standards for gas cooking products outweigh their costs. Today's standards also represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant energy savings. At present, gas cooking products that meet the amended standard levels are commercially available or, for the subgroup of consumers without access to the electrical grid or whose religious or cultural practices prohibit the use of grid electricity, are likely to be commercially available at the time the standards become effective.

## II. Introduction

### *A. Authority*

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A [3] of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' The program covers consumer products and certain commercial products (all of which are referred to hereafter as ''covered products''), including electric and gas kitchen ranges and ovens. (42 U.S.C. 6292(10), 6295(h)) Part A–1 [4] of Title III (42 U.S.C. 6311–6317) establishes a similar program for ''Certain Industrial Equipment'' (referred to hereafter as ''covered equipment''), including commercial clothes washers. (42 U.S.C. 6312, 6313(e)) Part A of Title III provides for test procedures, labeling, and energy conservation standards for residential cooking products and certain other types of products, and it authorizes DOE to require information and reports from manufacturers.

The National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, amended EPCA to establish prescriptive standards for cooking products. NAECA requires gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990, not to be equipped with a constant burning pilot light, and requires DOE to conduct two cycles of rulemakings for ranges and ovens to determine if the standards established should be amended. (42 U.S.C. 6295(h)(1)–(2)) The test procedures for cooking products appear at 10 CFR part 430, subpart B, appendix I.

DOE is conducting the present rulemaking for cooking products pursuant to the authority set forth above. The following paragraphs discuss some of the key provisions of EPCA relevant to the standards-setting rulemaking.

EPCA provides criteria for prescribing new or amended standards for covered products. As indicated above, any new or amended standard for cooking products must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Additionally, DOE may not prescribe an amended or new standard if DOE determines by rule that such a standard would not result in ''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B) and 6316(a))

EPCA also provides that in deciding whether such a standard is economically justified for covered products, DOE must, after receiving comments on the proposed standard, determine 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 products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that 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 of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a))

In addition, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a)), establishes a rebuttable presumption that any standard for covered products is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard,'' as calculated under the test procedure in place for that standard.

EPCA also contains what is commonly known as an ''anti-backsliding'' provision. (42 U.S.C. 6295(o)(1) and 6316(a)) This provision mandates that the Secretary not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. EPCA further provides that the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is ''likely to result in the unavailability in the United States of any product type (or class) of performance characteristics (including reliability), 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) and 6316(a))

Section 325(q)(1) of EPCA is applicable to promulgating standards for any type or class of covered product that has two or more subcategories. (42 U.S.C. 6295(q)(1) and 6316(a)) Under this provision, DOE must specify a different standard level than that which applies generally to such type or class of product for any group of products ''which have the same function or intended use, if * * * products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard'' than applies or will apply to the other products. (42 U.S.C. 6295(q)(1)(A) and (B)) In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must consider ''such factors as the utility to the consumer of such a feature'' and other factors DOE deems appropriate. (42 U.S.C. 6295(q)(1)) Any rule prescribing such a standard must include an explanation of the basis on which DOE established such higher or lower level. (See 42 U.S.C. 6295(q)(2)).

Federal energy conservation standards for covered products generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c) and 6316(a)) DOE can, however, grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and

[3] This part was originally titled Part B. It was redesignated Part A in the United States Code for editorial reasons.

[4] This part was originally titled Part C. It was redesignated Part A–1 in the United States Code for editorial reasons.

other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d) and 6316(a))

*B. Background*

1. Current Standards

As described in greater detail in the October 2008 NOPR, 73 FR 62034, 62039–40 (Oct. 17, 2008), the current energy conservation standards in EPCA for dishwashers apply to all products manufactured on or after May 14, 1994 (10 CFR 430.32(f)); for dehumidifiers, to all products manufactured on or after October 1, 2007 (42 U.S.C. 6295(cc)(1); 10 CFR 430.32(v)); for cooking products, to all products manufactured on or after January 1, 1990, (42 U.S.C. 6295(h)(1); 10 CFR 430.32(j)); and for CCWs to all equipment manufactured on or after January 1, 2007 (42 U.S.C. 6313(e)(1); 10 CFR 431.156). In addition, EISA 2007 established standards for dishwashers manufactured on or after January 1, 2010 (42 U.S.C. 6295(g)(10)) and for dehumidifiers manufactured on or after October 1, 2012 (42 U.S.C. 6295(cc)(2)). These standards are discussed in section I.B.

2. History of Standards Rulemaking for the Two Appliance Products

As noted above, this rulemaking originally bundled four products (dishwashers, dehumidifiers, residential cooking products, and commercial clothes washers). However, during the course of this rulemaking, Congress set energy conservation standard levels by statute for dishwashers and dehumidifiers as part of EISA 2007. Accordingly, the regulatory history provided below focuses on the two remaining appliance products—residential cooking products and commercial clothes washers.

NAECA amended EPCA to establish the current prescriptive standard requiring gas ranges and ovens with an electrical supply cord not to be equipped with a constant burning pilot light. (42 U.S.C. 6295(h)(1)) In a rulemaking undertaken pursuant to EPCA (42 U.S.C. 6295(h)(2)), DOE issued a final rule in which it found that standards were not justified for electric cooking products and, partially due to the difficulty of conclusively demonstrating the economic impacts of standards for gas-fired ranges and ovens, did not include amended standards for gas-fired ranges and ovens in the final rule. 63 FR 48038 (Sept. 8, 1998).

Section 136(a) and (e) of the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA to add CCWs as covered equipment, establish the current standards for such equipment, and require that DOE do two cycles of rulemakings to determine whether these standards should be amended. (42 U.S.C. 6311(1) and 6313(e)) DOE has incorporated these standards into its regulations. 70 FR 60407, 60416 (Oct. 18, 2005); 10 CFR 431.156.

DOE commenced this rulemaking on March 15, 2006, by publishing its framework document for the rulemaking, and then gave notice of a public meeting and of the availability of the document. 71 FR 15059 (March 27, 2006). The framework document described the approaches DOE anticipated using and issues to be resolved in the rulemaking. DOE held the public meeting on April 27, 2006, to present the contents of the framework document, describe the analyses DOE planned to conduct during the rulemaking, obtain public comment on these subjects, and facilitate the public's involvement in the rulemaking. DOE also allowed the submission of written statements after the public meeting. In response, DOE received 11 written statements.

On December 4, 2006, DOE posted two spreadsheet tools for this rulemaking on its Web site. The tools included calculation of the impacts of the candidate standard levels developed for the two appliance products. One tool calculates LCC and payback periods (PBPs); the other—the National Impact Analysis (NIA) Spreadsheet—calculates shipments, national energy savings (NES), and NPV.

On November 15, 2007, DOE published an advance notice of proposed rulemaking (ANOPR) in this proceeding. 72 FR 64432 (November 2007 ANOPR). In the November 2007 ANOPR, DOE described and sought comment on the analytical framework, models, and tools that DOE was using to analyze the impacts of energy conservation standards for the relevant appliance products. In addition, DOE published on its Web site the complete ANOPR technical support document (TSD), which included the results of DOE's preliminary analyses in this rulemaking. In the November 2007 ANOPR, DOE requested oral and written comments on these preliminary results and on a range of other issues, including the measurement of microwave oven standby power consumption and potential CCW product classes. DOE held a public meeting in Washington, DC, on December 13, 2007, to present the methodology and results of the ANOPR analyses, and to receive oral comments from those who attended. The oral and written comments DOE received focused on DOE's assumptions, approach, and analytical results, and were addressed in detail in the October 2008 NOPR.

In the October 2008 NOPR, DOE proposed new energy conservation standards for the two appliance products. 73 FR 62034, 62134 (Oct. 17, 2008). It also provided additional background information on the history of this rulemaking. *Id.* at 62040–41. In conjunction with the October 2008 NOPR, DOE also published on its Web site the complete TSD for the proposed rule, which incorporated the analyses DOE conducted and technical documentation for each analysis. The LCC spreadsheets, national impact analysis spreadsheets, Government Regulatory Impact Model (GRIM) spreadsheets, and regulatory impact analysis (RIA) spreadsheets are also available on DOE's Web site.[5] The standards proposed for the two appliance products are presented in Table II.1.

TABLE II.1—OCTOBER 2008 PROPOSED ENERGY EFFICIENCY STANDARDS

| Product class | Proposed energy conservation standards |
|---|---|
| Kitchen ranges and ovens: | |
| Gas cooktops/conventional burners | No constant burning pilot lights. |
| Electric cooktops/low or high wattage open (coil) elements | No standard. |
| Electric cooktops/smooth elements | No standard. |
| Gas ovens/standard oven | No constant burning pilot lights. |
| Gas ovens/self-clean oven | No change to existing standard. |
| Electric ovens | No standard. |

[5] Available online at DOE's Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/home_appl_analysis.html.*

TABLE II.1—OCTOBER 2008 PROPOSED ENERGY EFFICIENCY STANDARDS—Continued

| Product class | Proposed energy conservation standards |
|---|---|
| Microwave ovens | Maximum standby power = 1.0 watt. |
| Commercial clothes washers: | |
| Top-loading commercial clothes washers | 1.76 Modified Energy Factor/8.3 Water Factor. |
| Front-loading commercial clothes washers | 2.00 Modified Energy Factor/5.5 Water Factor. |

In the October 2008 NOPR, DOE discussed and invited comment specifically on the following topics: (1) The proposed standards for residential gas kitchen ranges and ovens, microwave ovens, and CCWs, as well as DOE's tentative conclusion that standards for residential electric kitchen ranges and ovens other than microwave ovens and gas self-cleaning ovens are not technologically feasible and economically justified; (2) whether battery-powered spark ignition modules are a viable alternative to standing pilots for manufacturers of gas ranges, ovens, and cooktops; (3) the technical feasibility of incorporating microwave oven cooking efficiency with standby mode and off mode power into a single metric for the purpose of developing energy conservation standards; (4) input and data regarding off mode power for microwave ovens; (5) input and data on the utility provided by specific features that contribute to microwave oven standby power, particularly display technologies and cooking sensors that do not require standby power; (6) input and data on control strategies available to allow manufacturers to make design tradeoffs between incorporating standby-power-consuming features such as displays or cooking sensors and including a function to turn power off to these components during standby mode, as well as on the viability and cost of microwave oven control board circuitry that could accommodate transistors to switch off cooking sensors and displays; (7) whether switching or similar modern power supplies can operate successfully inside a microwave oven and the associated efficiency impacts on standby power; (8) the selection of microwave oven standby standard levels for the engineering analysis; (9) input and data on the estimated incremental manufacturing costs, the assumed approaches to achieve each standby level for microwave ovens, and whether any intellectual property or patent infringement issues are associated with the design options presented in the TSD to achieve each standby level; (10) input and data on the estimated market share of microwave ovens at different standby power consumption levels; (11) the appropriateness of using other discount rates in addition to 7 percent and 3 percent real to discount future emissions reductions; and (12) the determination of the anticipated environmental impacts of the proposed rule, particularly with respect to the methods for valuing the expected carbon dioxide ($CO_2$) and oxides of nitrogen ($NO_X$) emissions savings due to the proposed standards. 73 FR 62034, 62133 (Oct. 17, 2008).

In addition to these topics on which it requested comment specifically, DOE addressed four topics in the October 2008 NOPR: (1) The determination of product classes for both cooking products and CCWs; (2) the adequacy of the residential clothes washer test procedure for CCWs; (3) small business impacts of the proposed cooking products standards; and (4) impacts of the proposed CCW standards on the competitive landscape.

DOE held a public meeting in Washington, DC, on November 13, 2008, to hear oral comments on and solicit information relevant to the proposed rule.

3. Further Rulemaking To Consider Energy Conservation Standards for Microwave Oven Standby Mode and Off Mode Power Use and for Commercial Clothes Washers

Among the responses to the October 2008 NOPR, DOE received a number of comments from interested parties that presented information and arguments for continuing the rulemaking process to consider standards for microwave oven standby mode and off mode power consumption, as well as standards for CCWs. These comments and DOE's response are discussed below.

Regarding microwave oven standby mode and off mode power consumption, interested parties raised concerns over issues associated with the concurrent microwave oven test procedure rulemaking. As mentioned above and discussed in detail in section III.B of today's notice, DOE proposed to amend the microwave oven (MWO) test procedure to incorporate by reference specific clauses of International Electrotechnical Commission (IEC) Standard 62301, *Household electrical appliances—Measurement of standby power*. DOE would have adopted definitions for ''standby mode'' and ''off mode'' in accordance with the EISA 2007 amendments to EPCA. 73 FR 62134 (Oct. 17, 2008) (MWO test procedure NOPR).

The Association of Home Appliance Manufacturers (AHAM) raised concerns about the ''robustness'' of these proposed microwave oven test procedure amendments, and supported continuing the microwave oven energy conservation standards rulemaking to allow additional time for DOE to collect data and to clarify the test procedure. (AHAM, No. 47 at pp. 3 and 5)[6] Whirlpool Corporation (Whirlpool) stated that DOE could perform better data gathering and analysis for a microwave oven standby power standard if DOE used the entire time until the EISA 2007 deadline of March 31, 2011 for a test procedure amendment to incorporate measurement of standby mode and off mode power consumption. Whirlpool and GE Consumer & Industrial (GE) requested that DOE halt the current microwave oven energy conservation standards rulemaking and work with industry to gather and analyze more comprehensive energy performance data. (Whirlpool, No. 50 at pp. 1–2; GE, No. 48 at p. 2) GE further stated that DOE's approach to standby mode and off mode power consumption for microwave ovens could have important implications for other covered products, and that the microwave oven energy conservation standards rulemaking should be postponed to allow DOE to address standby power issues for covered products either through negotiation or through a rulemaking that considers how the definition of ''standby power'' will affect all appliances, not just microwave ovens. (GE, No. 48 at p. 4)

AHAM raised four other concerns about the proposed microwave oven test procedure amendments: (1) Which microwave ovens are covered products; (2) the incorporation of the EPCA

[6] A notation in the form ''AHAM, No. 47 at pp. 3 and 5'' identifies a written comment (1) made by AHAM; (2) recorded in document number 47 that is filed in the docket of this rulemaking (Docket No. EE–2006–STD–0127) and maintained in the Resource Room of the Building Technologies Program; and (3) which appears on pages 3 and 5 of document number 47.

definitions for ''standby mode'' and ''off mode,'' which AHAM claims are outdated; (3) the conditions for standby power testing; and (4) the test period for measuring standby power. AHAM stated that there is considerable confusion regarding the definition of microwave ovens as covered products. DOE stated in the microwave oven test procedure NOPR that the test procedure amendments would apply to microwave ovens for which the primary source of heating energy is electromagnetic (microwave) energy, including microwave ovens with or without browning thermal elements designed for surface browning of food. The proposed test procedure amendments would not cover combination ovens (*i.e.*, ovens consisting of a single compartment in which microwave energy and one or more other technologies, such as thermal or halogen cooking elements or convection systems, contribute to cooking the food). 73 FR 62134, 62137 (Oct. 17, 2008). AHAM stated that it had been working to set up negotiations on a microwave oven standby power standard, but that confusion caused by DOE's definition of microwave ovens required AHAM to cancel its efforts until the definition is clarified. (AHAM, No. 47 at p. 3) Whirlpool concurred that the definition of microwave ovens needs to be clarified. It claimed that DOE appears to be creating a new product definition without properly engaging interested parties. (Whirlpool, Public Meeting Transcript, No. 40.5 at p. 29; Whirlpool, No. 50, at pp. 1–2) [7]

The Appliance Standards Awareness Project (ASAP) commented that it appreciates DOE accelerating development of the microwave oven test procedure ahead of the EISA 2007 deadline of 2011 so that standby power savings can be captured in this round of rulemaking for cooking products. (ASAP, Public Meeting Transcript, No. 40.5 at p. 32)

Regarding definitions of ''standby mode'' and ''off mode,'' AHAM and Whirlpool recognize that DOE is using the definitions provided under the EISA 2007 amendments to EPCA, but stated that DOE should consider IEC's recent work in developing the second edition of IEC Standard 62301, particularly the clarifications of the definitions of ''standby mode'' and ''off mode.'' AHAM cited the case in which a microwave oven would be plugged in and only energize a light-emitting diode (LED) or some other indication that the unit is in ''off mode.'' AHAM commented that this would represent a different way for the product to communicate with the consumer that might not be covered under the proposed mode definitions. (AHAM, Public Meeting Transcript, No. 40.5 at pp. 58–60; Whirlpool, Public Meeting Transcript, No. 40.5 at pp. 60–61) In contrast, ASAP stated that the EISA 2007 language defining ''standby mode'' and ''off mode'' was reviewed and agreed to by AHAM, and jointly recommended by AHAM and efficiency advocates to Congress. Therefore, ASAP asserted that DOE has definitions that were recommended by interested parties. (ASAP, Public Meeting Transcript, No. 40.5 at p. 64)

In the November 2007 ANOPR, DOE proposed considering a single product class for microwave ovens, encompassing microwave ovens with and without browning (thermal) elements. This product class did not include microwave ovens that incorporate convection systems. DOE stated that it was unaware of any data evaluating the efficiency characteristics of microwave ovens incorporating convection systems, and sought comments and information that would help it evaluate the performance of such products. 72 FR 64432, 64445, 64513 (Nov. 15, 2007). AHAM commented in response that the single product class should be broken up into subcategories according to features that may be different than when the standard was first put into effect. 73 FR 62034, 62049 (Oct. 17, 2008). However, in the October 2008 NOPR, DOE concluded, based on data supplied by AHAM and its own testing, that no features or utilities were uniquely correlated with efficiency that would warrant defining multiple product classes for microwave ovens. *Id.* Therefore, for the purposes of the NOPR analyses, DOE retained a single product class for microwave ovens. No additional data or information was submitted in response to the October 2008 NOPR that would justify amending the definition of the microwave oven product class.

DOE agrees with commenters that it is beneficial to harmonize, where possible, its standards and test procedures with those of other countries and international agencies, particularly in the area of standby power. DOE recognizes that IEC Standard 62301 is an internationally accepted test standard for the measurement of standby power in residential appliances, and that it would be beneficial to many manufacturers to be required to meet only a single standby power standard because they produce microwave ovens for markets in multiple countries. In considering a standby power standard for microwave ovens, along with associated amendments to the microwave oven test procedure, DOE proposed to incorporate language for definitions of ''active mode,'' ''standby mode,'' and ''off mode'' as provided by the EISA 2007 amendments to EPCA. (42 U.S.C. 6295(gg)(1)(A)) However, in directing DOE to amend its test procedures to address standby and off mode power consumption, the EISA 2007 amendments to EPCA allow DOE to amend the EPCA definitions of these modes, while requiring that DOE take ''into consideration the most current versions'' of IEC Standard 62301 and IEC Standard 62087. (42 U.S.C. 6295(gg)(1)(B) and (2)(A)) In light of these statutory provisions and recognizing the benefits of harmonization, DOE has decided to continue this rulemaking, as to microwave oven standby power standards, until the second edition of IEC Standard 62301 is finalized, which is expected to occur by July 2009. At such time, DOE will consider further modifications to DOE's microwave oven test procedure, particularly the ''standby mode'' and ''off mode'' definitions, and, on the basis of such amended test procedures, DOE will analyze potential energy conservation standards for microwave oven standby mode and off mode energy consumption. DOE invites data and information that will allow it to further conduct the analysis for standby and off mode power consumption of microwave ovens. DOE anticipates issuing supplemental notices of proposed rulemaking (SNOPRs) for microwave oven energy conservation standards and the microwave oven test procedure in order to obtain public input on DOE's updated proposals. As part of such SNOPRs, DOE will carefully consider and address any microwave oven-related comments on the October 2008 NOPR that remain relevant.

For CCWs, interested parties raised questions at the November 13, 2008, NOPR public meeting and in written comments on the max-tech level that DOE had identified in the October 2008 NOPR for top-loading units. (See section III.C.3 of this notice for additional discussion of max-tech levels.)

[7] A notation in the form ''Whirlpool, Public Meeting Transcript, No. 40.5 at p. 29'' identifies an oral comment that DOE received during the November 13, 2008, NOPR public meeting, was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EE–2006–STD–0127), and is maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) made by Whirlpool during the public meeting; (2) recorded in document number 40.5, which is the public meeting transcript that is filed in the docket of this rulemaking; and (3) which appears on page 29 of document number 40.5.

Specifically, at the public meeting, Alliance Laundry Systems (Alliance) questioned the validity of the certification data for the CCW model on which DOE based the max-tech level for top-loading machines. Alliance recommended that DOE, at a minimum, test and confirm the performance of the max-tech model before using it as the basis for assessing technical feasibility for the proposed standards. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 90–92) GE responded that it produces the model in question, and its internal testing confirms that the model meets the max-tech level. (GE, No. 48 at pp. 4–5) GE and Alliance agreed that there would not be consumer acceptance of the technology required to achieve the max-tech level (*i.e.,* whether CCWs incorporating advanced controls in a lightweight, non-rugged platform would be able to withstand the harsher usage in a laundromat or multi-family housing setting compared to a residential installation). (GE, Public Meeting Transcript, No. 40.5 at pp. 173–174; Alliance, Public Meeting Transcript, No. 40.5 at p. 23; Alliance, No. 45 at p. 1; Alliance, No. 45.1 at pp. 3, 7, 13) GE stated that it had received anecdotal consumer questions on the water levels and clothing turnover (*i.e.,* rotation of the clothing from top to bottom in the wash basket) during the cycle utilized by its CCW that meets the top-loading max-tech level. According to GE, while this CCW has achieved the max-tech level during actual use in the on-premises laundry segment,[8] it has not yet been justified as sustainable in commercial laundromats where the units are subject to much tougher conditions, such as overloading. (GE, No. 48 at p. 4)

The Multi-Housing Laundry Association (MLA) commented that there is no acceptable CCW currently that can meet the top-loading max-tech level presented in the October 2008 NOPR. According to MLA, previous non-agitator CCWs that could achieve max-tech performance have had poor load capacity, poor wash results, and high maintenance costs. MLA believes that the only way to meet the max-tech requirements would be to have either a cold water wash or such limited amounts of hot water that the clothes would not be effectively cleaned. According to MLA, to meet the max-tech requirements, water in the rinse cycle would be so limited that some soils, detergents, and sand would not be removed. (MLA, No. 49 at p. 4) ASAP stated that DOE's conclusion in the TSD on the max-tech model (*i.e.,* that all higher-efficiency residential clothes washers are impeller-type or do not have traditional agitators) is erroneous, commenting that there are agitator-type residential clothes washers on the market today that perform at higher levels than the CCW max-tech level that DOE has presented in the October 2008 NOPR. (ASAP, Public Meeting Transcript, No. 40.5 at p. 203) Whirlpool commented that the max-tech level cannot be achieved with the technologies implemented on current CCW models, but it believes that technology exists to develop such products by the time standards would become effective. (Whirlpool, No. 50 at p. 3)

EPCA requires DOE to consider the max-tech level in the analysis of efficiency levels for CCW energy conservation standards. (42 U.S.C. 6295(o)(2)(A) and 6316(a)) In the NOPR analysis, DOE determined that the max-tech level for top-loading CCWs, which was analyzed as part of TSL 3, is technologically feasible and economically justified. 73 FR 62034, 62122 (Oct. 17, 2008). However, the comments submitted by Alliance in response to the October 2008 NOPR raised questions on the validity of the max-tech level. (Alliance, Public Meeting Transcript, No. 40.5 at pp. 90–92; Alliance, No. 45 at p. 1; Alliance, No. 45.1 at pp. 4–5) In light of this uncertainty surrounding the performance of the CCW model upon which the top-loading max-tech level was based, DOE tested several units of that model. Preliminary results indicate that the MEF and WF of these units are below and above, respectively, the max-tech levels. Therefore, DOE has decided that it will continue the CCW rulemaking to further evaluate what an appropriate max-tech level should be for top-loading CCWs, and it will revise its analyses for this product class as necessary. DOE anticipates issuing an SNOPR to obtain public input on DOE's updated proposal regarding CCW standards. As part of such SNOPR, DOE will carefully consider and address any CCW-related comments on the October 2008 NOPR that remain relevant.

## III. General Discussion

### *A. Standby Power for Cooking Products*

An issue in this rulemaking has been whether DOE should consider power use in the standby and off modes in adopting energy conservation standards for cooking products. As discussed in greater detail in the October 2008 NOPR,[9] EISA 2007 amended EPCA to require that DOE address standby mode and off mode energy consumption both in adopting standards for all covered products (for final rules for new or amended standards adopted after July 1, 2010), including residential ranges and ovens and microwave ovens, and in test procedures for covered products (by March 31, 2011, for cooking products). (42 U.S.C. 6295(gg)) As noted above, these provisions are not yet operative as requirements for residential cooking products. *Id.*

Nonetheless, DOE has examined in this rulemaking whether to incorporate standby mode and off mode power consumption in its energy conservation standards for residential cooking products. 73 FR 62034, 62041 (Oct. 17, 2008). Specifically, in the October 2008 NOPR, DOE stated that it does not intend to pursue revision of its standards and test procedures to include standby power use by conventional cooking products at this time, because it lacks data indicating the potential for significant energy savings with respect to such power use. *Id.* at 62041, 62044. Accordingly, DOE tentatively decided to consider test procedure amendments for conventional cooking products in a later rulemaking that meets the March 31, 2011, deadline set by EISA 2007 under 42 U.S.C. 6295(gg)(2)(B). 73 FR 62034, 62041, 62044 (Oct. 17, 2008).

However, DOE did state its intention in the October 2008 NOPR to amend its test procedure for microwave ovens to incorporate a measurement of standby power and to consider inclusion of such power as part of the energy conservation standards rulemaking for the following reasons: (1) Energy use in this mode is a significant proportion of microwave oven energy consumption; and (2) currently, the range of standby power use among microwave ovens suggests that a standard would result in significant energy savings. *Id.* at 62041–42. As already discussed in sections II.B.2 and II.B.3, DOE proposed standards for microwave oven standby power use. *Id.* at 62120, 62134.

In response to the October 2008 NOPR, Whirlpool stated that no test procedure has yet been proposed for conventional cooking product standby power, and that Whirlpool does not have experience with or data available on standby power in these products. It further stated that DOE should request such data promptly to allow adequate time to develop it, noting that display technologies will be an issue. (Whirlpool, Public Meeting Transcript, No. 40.5 at p. 30) DOE expects to

[8] This segment refers to commercial clothes washers that are installed in multi-family housing.

[9] 73 FR 62034, 62041 (Oct. 17, 2008).

evaluate standby power for conventional cooking products in a future test procedure rulemaking that will meet the EPCA deadline of March 31, 2011, set forth in 42 U.S.C. 6295(gg)(2)(B). 73 FR 62034, 62041 (Oct. 17, 2008). DOE welcomes relevant data to support this rulemaking activity.

Edison Electric Institute (EEI) commented that standby power could effectively be addressed in gas cooking products with constant burning pilots by a performance standard for the energy consumption of the pilot, rather than by a prescriptive standard that would eliminate constant burning pilots altogether. EEI argued that even though energy savings would be reduced using this approach, such savings could still be fairly significant, and manufacturers would have more flexibility in meeting the energy conservation standards. (EEI, Public Meeting Transcript, No. 40.5 at pp. 19–20 and 50–51; EEI, No. 56 at p. 2)

In response, DOE notes as a preliminary matter that it considered EEI's suggestion of reduced input rate pilots as a technology option separately in section IV.A.2. The following responds to EEI's suggestion to consider an energy conservation standard for standby power consumption of ranges and ovens by regulating the performance of constant burning pilots. For standby power in conventional cooking products, the current DOE test procedures already provide a means for measurement of certain standby energy use (*i.e.,* pilot gas consumption in gas cooking products and clock energy consumption in ovens), which is included in the relevant EF metric. However, as explained above, to measure additional standby mode and off mode energy use as directed by EISA 2007, DOE would need to amend the test procedure to provide for more comprehensive measurement of standby mode and off mode power consumption. As discussed above, DOE is not contemplating revision of its standards and test procedures to address standby power use for conventional cooking products at this time. DOE plans to consider such revisions to the test procedure in a later rulemaking which meets the EPCA deadline of March 31, 2011. (42 U.S.C. 6295(gg)(2)(B)(vi)). DOE will also consider standby mode and off mode energy use in its next energy conservation standards rulemaking, as required by the EISA 2007 amendments to EPCA. (42 U.S.C. 6295(gg)(3)).

Further, even if DOE were to implement in this rulemaking the requirements of the EISA 2007 amendments to EPCA regarding standby mode and off mode energy use to conventional cooking products, DOE would be unable to prescribe a separate standard for pilot energy consumption in gas cooking products. The EISA 2007 amendments require that any final rule establishing or revising a standard for a covered product, adopted after July 1, 2010, shall incorporate standby mode and off mode energy use into a single amended or new standard, if feasible. If not feasible, the final rule shall establish a separate standard for standby mode and off mode energy consumption, if justified under 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3)) Because gas cooking product EF already incorporates gas consumption of the pilot by means of the calculation of annual energy consumption (10 CFR 430.23(i) and 10 CFR part 430, subpart B, appendix I, sections 4.1.2 and 4.2.2), the feasibility of a single metric integrating both active mode and standby mode energy use has clearly been demonstrated. AHAM stated that it strongly advocates, for products other than microwave ovens, that standby power be incorporated in active energy standards as directed by EISA 2007. (AHAM, No. 47 at p. 4) DOE expects to address standby mode and off mode power consumption in future test procedure and standards rulemakings for products other than microwave ovens in accordance with the requirements of the EISA 2007 amendments to EPCA. At such time, DOE will determine whether standby mode and off mode energy use can be incorporated into a new or amended energy conservation standard as directed by 42 U.S.C. 6295(gg)(3).

For microwave ovens, DOE separately considered whether it is feasible to incorporate standby mode and off mode energy use into a single metric. DOE tentatively concluded in the October 2008 NOPR that although it may be mathematically possible to combine energy consumption into a single metric encompassing active (cooking), standby, and off modes, it is not technically feasible to do so at this time because of the high variability in the current cooking efficiency measurement from which the active mode EF and annual energy consumption are derived, and because of the significant contribution of standby power to overall microwave oven energy use. 73 FR 62034, 62042–43 (Oct. 17, 2008). AHAM, Whirlpool, ASAP, and EEI individually, as well as ASAP, American Council for an Energy-Efficient Economy (ACEEE), American Rivers (AR), Natural Resources Defense Council (NRDC), Northeast Energy Efficiency Partnerships (NEEP), Northwest Power and Conservation Council (NPCC), Southern California Gas Company (SCG), San Diego Gas and Electric Company (SDG&E), Southern California Edison (SCE), and Earthjustice (EJ) jointly (hereafter ''Joint Comment'') supported the determination that a combined energy metric for microwave ovens is technically infeasible. (AHAM, Public Meeting Transcript, No. 40.5 at pp. 27 and 54–55; Whirlpool, Public Meeting Transcript, No. 40.5 at p. 29; ASAP, Public Meeting Transcript, No. 40.5 at p. 53; EEI, Public Meeting Transcript, No. 40.5 at p. 55; Whirlpool, No. 50 at p. 4; AHAM, No. 47 at p. 4; Joint Comment, No. 44 at p. 10)

Giving consideration to its previous findings and this general support from interested parties, DOE expects to maintain the approach, consistent with its preliminary determination, that a separate standby mode and off mode energy use metric should be developed in the continuation of the microwave oven energy conservation standards rulemaking, as discussed in section II.B.3 of this notice.

*B. Test Procedures*

For the reasons set forth in the October 2008 NOPR, DOE is not pursuing modification of its test procedures for cooking products in conjunction with this rulemaking, other than an amendment to address the standby power consumption of microwave ovens. 73 FR 62034, 62043–44 (Oct. 17, 2008). As to the latter, DOE published an MWO test procedure NOPR in which it proposed (1) to incorporate by reference into its microwave oven test procedure specific clauses from IEC Standard 62301 as to methods for measuring average standby mode and average off mode power consumption; (2) to incorporate into that test procedure pertinent definitions that are set forth in EISA 2007 amendments to EPCA; and (3) to adopt language to clarify the application of certain of the clauses that DOE proposes to incorporate by reference from IEC Standard 62301. 73 FR 62134 (Oct. 17, 2008). In the MWO test procedure NOPR, DOE also proposed a technical correction to an equation in the existing microwave oven test procedure, which concerns energy use in the active mode. *Id.* at 62137, 62141–42.

Largely because of the issues surrounding the MWO test procedure, DOE is continuing the energy conservation standards rulemaking for microwave oven standby mode and off mode power consumption. Therefore, DOE is also continuing to consider microwave oven test procedure amendments that would reflect clarified and expanded definitions of ''standby

mode'' and ''off mode'' power, which are expected to be incorporated in the second edition of IEC Standard 62301.

*C. Technological Feasibility*

1. General

As stated above, any standards that DOE establishes for cooking products must be technologically feasible. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. ''Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.'' 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

This final rule considers the same design options as those evaluated in the October 2008 NOPR. (See the final rule TSD accompanying this notice, chapters 3 and 4.) All the evaluated technologies have been used (or are being used) in commercially available products or working prototypes. DOE also has determined that there are products either on the market or in working prototypes at all of the efficiency levels analyzed in this notice. Therefore, DOE has determined that all of the efficiency levels evaluated in this notice are technologically feasible.

2. Gas Cooking Products—Alternatives to Line-Powered Electronic Ignition Systems

For gas cooking products, TSL 1 corresponds to the replacement of baseline constant burning (standing) pilots with electronic ignition systems. Line-powered electronic ignition systems are incorporated into many gas cooking products currently on the market, and, thus, this prescriptive standard is clearly technologically feasible. For the consumer subgroup consisting of households without access to electricity, however, TSL 1 would require a battery-powered ignition system. In the October 2008 NOPR, DOE stated that DOE research suggests that battery-powered ignition systems could be incorporated by manufacturers at a modest cost if manufacturers' market research suggested that a substantial number of consumers found such a product attribute to be important. DOE noted that such systems have been incorporated successfully in a range of related appliances, such as instantaneous water heaters. Further, DOE stated it believed that there is nothing in the applicable safety standards that would prohibit such ignition systems from being implemented on gas cooking products. Therefore, DOE stated in the October 2008 NOPR that households that use gas for cooking and are without electricity would likely have technological options that would enable them to continue to use gas cooking if standing pilot ignition systems were eliminated. 73 FR 62034, 62048, 62075, 62130 (Oct. 17, 2008). Numerous interested parties objected to DOE's tentative conclusion for the following reasons.

*Safety.* AHAM, Whirlpool, and GE commented that DOE did not address potential safety concerns of eliminating standing pilots, and expressed concern that battery-powered ignition systems would not meet the applicable safety standard, American National Standards Institute (ANSI) Standard Z21.1, ''American National Standard for Household Cooking Gas Appliances'' (ANSI Z21.1). (AHAM, Public Meeting Transcript, No. 40.5 at pp. 15–16, 48–49; AHAM, No. 47 at p. 2; Whirlpool, No. 50 at p. 4; GE, No. 48 at p. 2) AHAM believes that ANSI Z21.1 would need to be revised to incorporate battery-powered ignition systems for unattended units (*i.e.*, gas ovens), and this would not likely take place before the proposed 2012 effective date of potential standards. (AHAM, No. 47 at p. 2 and p. 4)

The American Gas Association (AGA) and AHAM commented that battery-powered ignition systems are not viable on a residential range because of cost and safety, particularly regarding the need for battery replacement. If a battery is not readily available, these commenters argued that consumers may attempt to light the range with a match or use an extension cord. Furthermore, these commenters suggested that if battery-powered ignition systems are not on the market, the reason may be economics. AGA recommended that DOE use caution before determining viability of such systems. (AGA, Public Meeting Transcript, No. 40.5 at pp. 44–45; AHAM, No. 47 at p. 4) Whirlpool noted that battery-powered ignition systems are subject to failure when the battery is weak or dead, and that the consumer cannot determine battery status. According to Whirlpool, using matches as a backup for ignition is unsafe and would also lead to making matches more accessible to small children. (Whirlpool, No. 50 at p. 4) U.S. Representatives Joseph Pitts and Bill Shuster (Pitts and Shuster) also commented that a safety concern exists if a consumer tries to light a range with matches when the batteries in the ignition system are dead. (Pitts and Shuster, No. 57 at p. 2) Whirlpool, AHAM, and GE expressed concern about the viability of using ignition systems typically designed for outdoor grills in an indoor application, primarily for reasons of potential gas leakage and reliability. (Whirlpool, No. 50 at p. 4; AHAM, No. 47 at p. 4; AHAM, Public Meeting Transcript, No. 40.5 at p. 49; GE, No. 48 at p. 2) Whirlpool stated that, in outdoor applications such as grills, air movement would likely disperse gas if the unit failed to ignite. However, in indoor applications, dispersion is unlikely, thereby resulting in an elevated threat of explosion or suffocation. (Whirlpool, No. 50 at p. 4) Sempra Utilities (Sempra) agreed with AGA about potential safety issues, particularly for low-income consumers. (Sempra, Public Meeting Transcript, No. 40.5 at p. 46) Pacific Gas and Electric (PG&E) responded to Sempra's comment by stating that although DOE cannot compromise safety in considering battery-powered ignition systems, frequently initial cost is weighted too much relative to operating cost. (PG&E, Public Meeting Transcript, No. 40.5 at p. 47) DOE understands PG&E's comment to mean that, even for low-income consumers, a higher cost for a safe, reliable battery-powered ignition system may be economically justified. GE stated there are currently no proven safe, reliable alternative to standing pilots, and until such time as a proven alternative exists, standing pilots should be retained. (GE, No. 48 at pp. 1–2)

*Commercial Availability.* AGA and Sempra questioned whether battery-powered ignition systems have been applied to other residential products, such as instantaneous water heaters or furnaces. AGA, Pitts and Shuster, and the National Propane Gas Association (NPGA) recognized that there are recreational vehicle (RV) water heaters and furnaces which use a 12-volt (V) battery ignition system, but they believe this specialty application would be difficult to apply to a domestic range due to cost, safety certification, and other issues. (AGA, Public Meeting Transcript, No. 40.5 at pp. 18, 44, and 93; Sempra, Public Meeting Transcript, No. 40.5 at p. 46; NPGA, No. 52 at p. 2; AGA, No. 46 at p. 2; Pitts and Shuster, No. 57 at p. 2)

EEI asked if there are battery-powered ignition systems in any commercially available indoor gas cooking products on the market. (EEI, Public Meeting Transcript, No. 40.5 at p. 43) AGA and NPGA stated that there are currently no design-certified and listed household products available that incorporate battery-powered ignition systems. According to AGA and NPGA, any presumption that such systems could be incorporated into covered products

raises a host of uncertainties regarding safety, certification, and other issues, and, therefore, goes beyond the scope of this rulemaking. (AGA, No. 46 at p. 2; NPGA, No. 52 at p. 2) Pitts and Shuster commented that battery-powered ignitions systems are not currently on the market because they are not cost effective. (Pitts and Shuster, No. 57 at p. 2) AHAM and GE do not see that there are any other viable technologies to eliminate standing pilots. (AHAM, Public Meeting Transcript, No. 40.5 at p. 48; GE, No. 48 at p. 2) LG Electronics (LG) asked whether DOE considered technologies and products available in other parts of the world. (LG, Public Meeting Transcript, No. 40.5 at p. 47)

*Households Without Electricity*. GE and Peerless-Premier Appliance Company (Peerless-Premier) stated that standing pilots provide consumer utility for customers without line power for economic, religious, or other reasons. (GE, Public Meeting Transcript, No. 40.5 at p. 31; GE, No. 48 at p. 2; Peerless Letter, No. 57 [10] at pp. 1–2) AGA and NPGA also questioned DOE's assertion that consumer subgroups that are prohibited from using electricity would be allowed to use battery-powered ignition. (AGA, No. 46 at p. 2; NPGA, No. 52 at p. 2)

*DOE Response to Comments*. In response to these comments, DOE conducted additional research on battery-powered ignition systems for residential gas cooking products. As an initial matter, DOE could not identify any indoor ranges incorporating such ignition systems that are on the market in the United States. DOE was able to identify a single gas range for sale in the United Kingdom (U.K.) that incorporates a battery-powered ignition system that appeared to meet the functional safety requirements of ANSI Z21.1 (*i.e.*, that the oven main burner is lit by an intermittent gas pilot that is in turn lit by a battery-powered spark igniter.) This ignition system does not require the user to push a separate ''light'' button at the same time as the control knob is turned to allow pilot gas flow. Such a separate operation would be prohibited under ANSI Z21.1. However, further DOE research determined that the ignition system does not include a safety device to shut off the main gas valve in the event that no flame is detected, which is required by the ANSI standard.

However, as noted from interested parties' comments, there are gas cooking products with battery-powered ignition for RV applications that are available in the United States. DOE determined that the sections in the ANSI safety standards for RV gas cooking products and residential gas cooking products that relate to the ignition system are equivalent. Thus, it could be inferred that a battery-powered ignition system designed for an RV gas range could be integrated into a residential gas range that could meet ANSI Z21.1 requirements. Such certification, though, does not appear to have been obtained thus far. In addition, these ignition systems are powered by 12 V automotive-type batteries and consume enough energy during operation to preclude the use of typical household-scale batteries, such a 1.5 V ''AA'' or 9 V batteries. Since 12 V batteries must be periodically recharged, this approach would likely not be viable for consumers without household electricity.

DOE next investigated the possibility that battery-powered ignition systems used in other indoor residential appliances in the United States could meet the requirements of ANSI Z21.1, even though they are not currently being incorporated in gas cooking products. DOE identified several such appliances, including a remote-controlled gas fireplace and instantaneous gas water heaters. For these products, the battery-powered ignition systems are required to meet the same or equivalent component-level ANSI safety standards as are required for automatic ignition systems in gas cooking products. DOE contacted several manufacturers of gas cooking products, fireplaces, and instantaneous water heaters, as well as ignition component suppliers, to investigate the technological feasibility of integrating these existing battery-powered ignition systems into gas cooking products that would meet ANSI Z21.1. None of these manufacturers could identify insurmountable technological impediments to the development of such a product. Based on its research, DOE determined that the primary barrier to commercialization of battery-powered ignition systems in gas cooking products has been lack of market demand and economic justification rather than technological feasibility. Therefore, DOE concludes that a gas range incorporating one of these ignition systems could meet ANSI Z21.1. In addition, DOE research suggests that the market niche for gas cooking products equipped with battery-powered ignition systems, which would be created by the proposed gas cooking product standards, would likely attract entrants among ignition component suppliers.

After considering issues regarding safety and commercial availability, DOE concludes that technologically feasible alternative ignition systems to standing pilots in gas cooking products for the small subgroup of households without electricity will likely be available at the time these energy conservation standards are effective. For more information, see chapter 3 of the TSD accompanying this notice.

3. Maximum Technologically Feasible Levels

As required by EPCA under 42 U.S.C. 6295(p)(2), in developing the October 2008 NOPR, DOE identified the design options that would increase the energy efficiency of cooking products. 73 FR 62034, 62045 (Oct. 17, 2008). (See chapter 5 of the NOPR TSD.) DOE did not receive any comments on the maximum technologically feasible levels in the October 2008 proposed rule that would lead DOE to consider changes to these levels. Therefore, for today's final rule, the max-tech levels for all cooking product classes are the max-tech levels identified in the October 2008 NOPR. These levels are provided in Table III.1 below.

TABLE III.1—OCTOBER 2008 PROPOSED MAX-TECH LEVELS FOR COOKING PRODUCTS

| Product | Max-Tech EF |
|---|---|
| Gas Cooktops | 0.42 |
| Electric Open (Coil) Cooktops | 0.769 |
| Electric Smooth Cooktops | 0.753 |
| Gas Standard Ovens | 0.0583 |
| Gas Self-Clean Ovens | 0.0632 |
| Electric Standard Ovens | 0.1209 |
| Electric Self-Clean Ovens | 0.1123 |
| Microwave Ovens | 0.602 |

*D. Energy Savings*

DOE forecasted energy savings in its NES analysis through the use of an NES spreadsheet tool, as discussed in the October 2008 NOPR. 73 FR 62034, 62045–46, 62068–74, 62104–05 (Oct. 17, 2008).

One criterion that governs DOE's adoption of standards for cooking products is that the standard must result in ''significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B)) While EPCA does not define the term ''significant,'' a U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress

[10] In addition to its comments submitted to DOE, entered into the docket as comment number 42, Peerless-Premier Appliance Co. submitted a letter (Peerless Letter) to Congressman Whitfield of Kentucky regarding the October 2008 NOPR. A copy of the letter was entered into the docket as comment number 55 for this rulemaking in addition to comments that Peerless-Premier submitted directly to DOE.

intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' DOE's estimates of the energy savings for energy conservation standards at each of the TSLs considered for cooking products for today's rule indicate that the energy savings each would achieve are nontrivial. Therefore, DOE considers these savings ''significant'' within the meaning of section 325 of EPCA.

*E. Economic Justification*

1. Specific Criteria

As noted earlier, EPCA provides seven factors to evaluate in determining whether an energy conservation standard for covered products is economically justified. (42 U.S.C. 6295(o)(2)(B)(i) The following sections discuss how DOE has addressed these factors in evaluating efficiency standards for cooking products.

a. Economic Impact on Consumers and Manufacturers

DOE considered the economic impact of potential standards on consumers and manufacturers of cooking products. For consumers, DOE measured the economic impact as the change in installed cost and life-cycle operating costs (*i.e.,* the LCC.) (See sections IV.C of this notice and chapter 8 of the TSD accompanying this notice.) DOE investigated the impacts on manufacturers through the manufacturer impact analysis (MIA). (See sections IV.F and VI.C.2 of this notice and chapter 13 of the TSD accompanying this notice.) This factor is discussed in detail in the October 2008 NOPR. 73 FR 62034, 62046, 62057–68, 62075–81, 62085–104, 62128–30 (Oct. 17, 2008).

b. Life-Cycle Costs

DOE considered life-cycle costs of cooking products, as discussed in the October 2008 NOPR. 73 FR 62034, 62046, 62057–68, 62085–91 (Oct. 17, 2008). DOE calculated the sum of the purchase price and the operating expense—discounted over the lifetime of the product—to estimate the range in LCC benefits that consumers would expect to achieve due to standards.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA also requires DOE to consider the total projected energy savings that are expected to result directly from a proposed standard in determining the economic justification of that standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As in the October 2008 NOPR (73 FR 62034, 62045–46, 62068–74, 62104–05 (Oct. 17, 2008)), DOE used the NES spreadsheet results for today's final rule in its consideration of total projected savings that are directly attributable to the standard levels DOE considered.

d. Lessening of Utility or Performance of Products

In considering standard levels, DOE sought to avoid new standards for cooking products that would lessen the utility or performance of such products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) 73 FR 62034, 62046–47, 62107 (Oct. 17, 2008).

e. Impact of Any Lessening of Competition

DOE considers any lessening of competition that is likely to result from standards. Accordingly, as discussed in the October 2008 NOPR (73 FR 62034, 62047, 62107 (Oct. 17, 2008)), DOE requested that the Attorney General transmit to the Secretary a written determination of the impact, if any, of any lessening of competition likely to result from the standards proposed in the October 2008 NOPR, including those for cooking products, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making such a determination, DOE provided the Department of Justice (DOJ) with copies of the October 2008 proposed rule and the TSD for review. The Attorney General's response is discussed in section VI.C.5 and is reprinted at the end of this rule. (DOJ, No. 53 at pp. 1–2)

f. Need of the Nation To Conserve Energy

In considering standards for cooking products, the Secretary must consider the need of the Nation to conserve energy. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The Secretary recognizes that energy conservation benefits the Nation in several important ways. The non-monetary benefits of standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system. Standards generally are also likely to result in environmental benefits. As discussed in the proposed rule, DOE has considered these factors in considering whether to adopt standards for cooking products. 73 FR 62034, 62047, 62081–84, 62107–62113, 62130–31 (Oct. 17, 2008).

2. Rebuttable Presumption

Section 325(o)(2)(B)(iii) of 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)) DOE's LCC and PBP analyses generate values that calculate the payback period for consumers of a product meeting potential energy conservation standards, which includes, but is not limited to, the 3-year payback period contemplated under the rebuttable presumption test discussed above. (See chapter 8 of the TSD that accompanies this notice.) 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). 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).

## IV. Methodology and Discussion of Comments on Methodology

DOE used several analytical tools that it developed previously and adapted for use in this rulemaking. One is a spreadsheet that calculates LCC and PBP. Another tool calculates national energy savings and national NPV. DOE also used the GRIM, along with other methods, in its MIA. Finally, DOE developed an approach using the National Energy Modeling System (NEMS) to estimate impacts of energy efficiency standards for residential cooking products on electric utilities and the environment. The TSD appendices discuss each of these analytical tools in detail. As a basis for this final rule, DOE has continued to use the spreadsheets and approaches explained in the October 2008 NOPR. DOE used the same general methodology as applied in the October 2008 NOPR, but revised some of the assumptions and inputs for the final rule in response to interested parties' comments. The following paragraphs discuss these revisions.

*A. Market and Technology Assessment*

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, and market characteristics. This activity includes both quantitative

and qualitative assessments based primarily on publicly available information. DOE presented various subjects in the market and technology assessment for this rulemaking. (See the October 2008 NOPR and chapter 3 of the NOPR TSD.) These include product definitions, product classes, manufacturers, quantities and types of products sold and offered for sale, retail market trends, and regulatory and nonregulatory programs.

1. Product Classes

In general, when evaluating and establishing energy conservation standards, DOE divides covered products into classes by the type of energy used, capacity, or other performance-related features that affect consumer utility and efficiency. (42 U.S.C. 6295(q)) Different energy conservation standards may apply to different product classes. *Id.*

For cooking products, DOE based its product classes on energy source (*e.g.*, gas or electric) and cooking method (*e.g.*, cooktops, ovens, and microwave ovens). DOE identified five categories of cooking products: gas cooktops, electric cooktops, gas ovens, electric ovens, and microwave ovens. The following discussion provides clarification regarding DOE's selection of product classes for residential cooking products.

In its regulations implementing EPCA, DOE defines a ''conventional range'' as ''a class of kitchen ranges and ovens which is a household cooking appliance consisting of a conventional cooking top and one or more conventional ovens.'' 10 CFR 430.2. The November 2007 ANOPR presented DOE's reasons for not treating gas and electric ranges as a distinct product category and for not basing its product classes on that category, primarily based upon DOE's determination that, because ranges consist of both a cooktop and oven, any potential cooktop and oven standards would apply to the individual components of the range. 72 FR 64432, 64443 (Nov. 15, 2007). In the November 2007 ANOPR, DOE defined a single product class for gas cooktops as gas cooktops with conventional burners. 72 FR 64432, 64443–44 (Nov. 15, 2007) For gas ovens, DOE defined two product classes—gas standard ovens with or without a catalytic line and gas self-cleaning ovens. 72 FR 64432, 64445 (Nov. 15, 2007) These product class definitions were maintained in the October 2008 NOPR. 73 FR 62034, 62048 (Oct. 17, 2008).

DOE tentatively concluded in the November 2007 ANOPR that standing pilot ignition systems are not performance-related features that provide unique utility and would, therefore, not warrant a separate product class. 72 FR 64432, 64463 (Nov. 15, 2007). In response to interested parties' comments on this proposed determination, DOE noted in the October 2008 NOPR that the purpose of ignition systems is to ignite the gas when burner operation is needed for cooking, and either standing pilot or electronic ignition provides this function. In addition, DOE concluded from previous analysis that the ability to operate in the event of an electric power outage is not a utility feature that affects performance of gas cooking products. 73 FR 62034, 62048 (Oct. 17, 2008).

DOE notes that the EISA 2007 amendments to EPCA provide an exception from the residential boiler energy conservation standards for ''[a] boiler that is manufactured to operate without any need for electricity or any electric connection, electric gauges, electric pumps, electric wires, or electric devices. * * *'' (42 U.S.C. 6295(f)(3)(C)) Such units are typically equipped with a standing pilot. The October 2008 NOPR referred indirectly to this exception by stating that DOE addressed it in its residential furnace and boiler rulemaking. 73 FR 62034, 62048 (Oct. 17, 2008). DOE is clarifying this statement in today's final rule as follows. DOE's full rulemaking analysis (conducted prior to passage of EISA 2007) did not result in such an exception in its most recent energy conservation standards rulemaking for residential furnaces and boilers. 72 FR 65136 (Nov. 19, 2007). However, DOE subsequently published a final rule in the form of a technical amendment whose sole purpose was to codify the EISA 2007 amendments to EPCA pertaining to residential furnace and boiler standards set by statute, including the exception above. 73 FR 43611, 43613 (July 28, 2008). Because the July 28, 2008, rule implemented statutory provisions over which the Department had no rulemaking discretion, DOE did not conduct any supporting analysis or provide any input on this boiler exclusion. Congress incorporated this exclusion in the energy conservation standards for boilers, but Congress chose not to include a similar provision for gas cooking products with standing pilots. Accordingly, DOE used the applicable EPCA provisions for determining whether performance-related features warrant separate energy conservation standards (42 U.S.C. 6295(q)(1)), and DOE determined in the October 2008 NOPR that it would be unable to create a similar exception for gas cooking products because there is no unique utility associated with gas cooking products equipped with standing pilot ignition, compared to those with electronic ignition. 73 FR 62034, 62048 (Oct. 17, 2008). DOE based this understanding on its tentative conclusion that there is not expected to be any appreciable difference in cooking performance between gas cooking products with or without a standing pilot and that battery-powered electronic ignitions systems could provide ignition in the absence of line power (*i.e.*, electricity from the utility grid). *Id.*

Through market research for the October 2008 NOPR, DOE determined that battery-powered electronic ignition systems have been implemented in other products, such as instantaneous gas water heaters, barbeques, furnaces, and other appliances, and the use of such ignition systems appeared acceptable under ANSI Z21.1. Therefore, subgroups that prohibit the use of line electricity, or that do not have line electricity available, could still use gas cooking products without standing pilots, assuming gas cooking products would be made available with battery-powered ignition. Thus, DOE concluded that standing pilot ignition systems do not provide a distinct utility and that a separate class for standing pilot ignition systems would not be warranted under 42 U.S.C. 6295(q). 73 FR 62034, 62048 (Oct. 17, 2008).

In response to the October 2008 NOPR, AGA commented that DOE should assign a separate product class to gas cooking products with standing pilots. According to AGA, NPGA, and Pitts and Shuster, DOE acknowledged in the October 2008 NOPR that some religious groups do not allow electricity or adopt it in their area, and that DOE made an exception in EISA 2007 to allow standing pilots for gravity-fed gas boilers for such consumers. These commenters believe that gas ranges with standing pilots should remain available due to their unique utility. (AGA, Public Meeting Transcript, No. 40.5 at pp. 16–18; AGA, No. 46 at p. 2; NPGA, No. 52 at p. 2; Pitts and Shuster, No. 57 at p. 1) NPGA also objected to DOE's determination in the October 2008 NOPR that gas ranges incorporating pilot ignition systems do not provide a unique utility to gas customers, as well as DOE's determination that power outages are not frequent or long enough for residential electricity customers to be affected by the inability to cook food. NPGA and AGA stated that the utility of having an appliance with a standing pilot is important, especially for that segment of the population that cannot use electricity due to religious or

cultural practices or current economic status, or for whom electrical service is unavailable (such as for hunting cabins). (NPGA, No. 52 at p. 2; AGA, No. 46 at p. 2) AGA also stated that the unique consumer utility of an ignition system is conveyed by the installed environment (*i.e.*, whether line electricity is present) rather than by the ignition technology itself. According to AGA, EPCA addresses consumer utility associated with the covered product, not with a specific system or technology used in the product. (AGA, No. 46 at p. 2)

As discussed above, Congress created the exception to the standards in EPCA for residential boilers which operate without the need for electricity (*i.e.*, ''gravity-fed gas boilers''). Such an exception was not based on analysis in DOE's most recent energy conservation standards rulemaking for residential furnaces and boilers. Congress did not provide a similar exclusion for gas cooking products with standing pilots. Certain consumer subgroups currently use such gas cooking products due to religious or cultural practices or a lack of access to electrical service. However, DOE continues to believe that the consumer utility that would need to be maintained for these subgroups is the same as for all consumers (*i.e.*, the ability to ignite the cooking product under the nominal conditions of installation, which for these consumer subgroups includes the absence of electrical service.) DOE also considered whether additional utility is conferred by the ability to provide ignition during an atypical event such as a loss of line power for those consumers who have electrical service, but DOE did not receive additional information regarding duration and frequency of power outages that would lead it to conclude that the ability to operate during such an event represents significant utility. Therefore, DOE maintains that there is no unique utility provided by standing pilot ignition systems, and that a separate product class for gas cooking products incorporating standing pilots is not warranted under 42 U.S.C. 6295(q). In making this determination, however, DOE recognizes that achieving safe ignition in gas cooking products for consumer subgroups without electricity in the home in the absence of standing pilot ignition requires an alternative ignition technology that does not rely on line power. As discussed in section III.C.2 of today's notice and chapter 3 of the TSD accompanying it, DOE identified battery-powered ignition systems as a potential alternative to standing pilots, and believes that such systems will likely be commercially available to these consumer subgroups by the time the energy conservation standards are effective.

2. Technology Options

As discussed above in section III.A, EEI suggested that DOE consider methods to reduce the input rate of standing pilot ignition systems in gas cooking products, thereby lowering the product's overall energy consumption, rather than strictly considering a ban on the use of standing pilots. EEI stated that DOE should create a performance standard for standing pilot lights, similar to what was proposed in the October 2008 NOPR for microwave ovens. EEI claimed a performance standard restricting the input rate of standing pilots could save a large fraction of standby energy usage in gas cooking products, while still providing flexibility to manufacturers. (EEI, Public Meeting Transcript, No. 40.5 at pp. 19–20 and 50–51; EEI, No. 56 at p. 2)

In the framework document for this rulemaking, DOE requested comment on a list of technologies, based on its 1996 analysis in the ''Technical Support Document for Residential Cooking Products'' [11] (1996 TSD), that it would consider for improving the efficiency of cooking products. These technologies did not include the one EEI now suggests (*i.e.*, one reducing the input rate of standing pilot ignition systems.) In response, several interested parties submitted comments on the framework document that indicated the list of technology options was still relevant because there have been no major technological breakthroughs in conventional cooking products since 1996. 72 FR 64432, 64452 (Nov. 15, 2007) No interested parties suggested any additional technologies for DOE to consider. DOE presented this list again in the November 2007 ANOPR, along with the analyses based on efficiency levels derived from the same technology options. 72 FR 64432, 64451–52, 64463–64 (Nov. 15, 2007). DOE did not receive any comments in response to the November 2007 ANOPR which suggested analyzing additional technology options for conventional cooking products. Furthermore, EEI's comments in response to the October 2008 NOPR provided no supporting information to validate the technological feasibility of reduced pilot input rate for improving the energy usage of gas cooking products equipped with standing pilots. DOE research did not identify any commercially available pilots suitable for gas range applications that operate at input rates substantially lower than that assumed for the baseline efficiency levels (117 British thermal units per hour (Btu/h) for gas cooktops and 175 Btu/h for gas ovens.) These baseline pilot input rates are based upon data DOE received as inputs to its analyses presented in the 1996 TSD, and the baseline values are intended to represent average input rates for the distribution of pilots incorporated in baseline ovens and cooktops. DOE does not have information on the distribution of pilot input rates that are associated with the range of ovens and cooktops currently on the market, but DOE believes that pilot capacities are closely related to the specific burner system(s) in each cooking product. DOE concluded that specifying a maximum pilot input rate without consideration of the diversity of such systems would likely raise utility issues, wherein the pilot could potentially fail to perform its required ignition function in some cooking products. For these reasons, DOE is not considering reduced pilot input rates in this rulemaking.

3. Excluded Product Classes and Technologies

DOE stated in the November 2007 ANOPR that it lacks efficiency data to determine whether certain designs (*e.g.*, commercial-style cooking products) and certain technologies (*e.g.*, induction cooktops) should be excluded from the rulemaking. 72 FR 64432, 64444–45, 64460 (Nov. 15, 2007). Due to a lack of public comments or other information that would counter DOE's tentative decision to exclude these products and technologies, DOE maintained these proposed exclusions in the October 2008 NOPR. 73 FR 62034, 62048 (Oct. 17, 2008).

AHAM and Whirlpool agree with the proposal to exclude commercial-style cooking products and induction technology. (AHAM, No. 47 at p. 3; Whirlpool, No. 50 at p. 1) In light of these comments in support of the proposal and in the absence of any new information, DOE has decided not to include commercial-style cooking products and induction technology in today's final rule.

*B. Engineering Analysis*

1. Efficiency Levels

In the November 2007 ANOPR, DOE reviewed and updated the design options and efficiency levels published in the 1996 TSD analysis, an approach generally supported by interested parties. DOE did not receive any

[11] Available online at DOE's Web site: *http://www.eere.energy.gov/buildings/appliance_standards/residential/cooking_products_0998_r.html.*

comments on the November 2007 ANOPR regarding omitted cooking technologies and retained all the cooking technologies, design options, and efficiency levels for cooking product energy factor as part of the October 2008 NOPR. 73 FR 62034, 62052 (Oct. 17, 2008).

AGA commented in response to the October 2008 NOPR that DOE did not consider alternative technologies to banning standing pilots, which places a great burden on the justification of pilot ignition products as the baseline technology. AGA stated that DOE had difficulty in defining reasonable design options for these gas products, but that does not justify defining standing pilots as the baseline product. (AGA, No. 46 at p. 3)

In response, DOE notes that baseline products refer to a model or models that have features and technologies typically found in products currently offered for sale. The baseline model in each product class represents the characteristics of products in that class, and typically achieves minimum energy efficiency performance. In the case of gas cooking products that are not equipped with an electrical cord (*i.e.*, gas cooktops and gas standard ovens), minimum energy efficiency performance is associated with products equipped with standing pilot ignition systems. DOE research has not revealed any other design options that would support the definition of different baseline efficiency levels for gas cooktops and gas standard ovens, and DOE did not receive any information on alternative technologies or design options. Therefore, DOE is maintaining the baseline efficiency levels associated with standing pilots for gas cooktops and gas standard ovens in today's final rule.

2. Manufacturing Costs

In the November 2007 ANOPR, DOE estimated a manufacturing cost at each efficiency level in this rulemaking by scaling the manufacturing costs that were provided in the 1996 TSD by the producer price index (PPI).[12] 72 FR 64432, 64467–69 (Nov. 15, 2007). DOE retained these same manufacturing costs in the October 2008 NOPR and is also retaining them in today's final rule because it has determined that there has been no significant change in the PPI since the analysis for the November 2007 ANOPR, which used the PPI from 2006. For electric cooking products (including microwave ovens), the PPI increased 1.4 percent between 2006 and 2007, the most recent year for which final PPI values are available from the U.S. Department of Labor's Bureau of Labor and Statistics. The PPI for gas cooking products increased 2.9 percent in that same time period.

As discussed in the October 2008 NOPR, AGA had commented that DOE underestimated the incremental manufacturing cost of electronic ignition, which for gas cooking products corresponds to efficiency level 1. According to AGA, the Harper-Wyman Co., in 1998 comments to DOE, provided an incremental retail price of $150 for a gas range with electronic ignition relative to a gas range with standing pilot ignition system. AGA argued that this retail price increment stands in sharp contrast to the $37 incremental manufacturing cost estimated by DOE. 73 FR 62034, 62054 (Oct. 17, 2008).

In response to AGA's comments on the November 2007 ANOPR, DOE contacted component suppliers of gas cooking product ignition systems to validate DOE's manufacturing cost estimates. DOE believes that the information collected verified that the costs in the November 2007 ANOPR represented current costs and, therefore, continued in the October 2008 NOPR to characterize the incremental manufacturing costs for the non-standing pilot ignition systems with the estimates developed for the November 2007 ANOPR. *Id.*

In response to the October 2008 NOPR, AGA stated it disagrees with DOE's approach for estimating incremental manufacturing costs for electronic ignition. AGA commented that DOE's use of survey data on appliance prices is a poor proxy for manufacturing cost because pricing policy is based on a host of factors (including marginal product demand), not strictly on manufactured cost. Therefore, the commenter stated that it disagrees with DOE's estimate of $37 in incremental cost for electronic ignition. Instead, AGA believes that DOE should use a figure closer to the estimate of $150 previously provided by AGA, which was based on manufacturer estimates for redesign of pilot ignition products. AGA also stated that DOE should examine the impact on consumers, not on the manufacturer's costs. (AGA, Public Meeting Transcript, No. 40.5 at pp. 17–18; AGA, No. 46 at p. 4)

For this final rule, DOE conducted further research regarding retail prices for comparable gas ranges with standing pilot and electronic ignition systems. A comparison of manufacturer suggested retail prices for four brands showed a price differential ranging from $0 to $50 for a consumer to purchase a gas range with an electronic ignition system, rather than a standing pilot, from the same manufacturer. (See chapter 3 of the TSD accompanying this notice.) DOE recognizes that manufacturer pricing takes many factors into account, but the consistency of the price increments among four different manufacturers suggests that DOE's estimate of $37 for a manufacturing cost increment to eliminate standing pilots in a gas range has greater validity than an increment of $150. DOE further notes that, according to AGA's comments on the November 2007 ANOPR, the $150 estimate was provided by Harper-Wyman Co. in 1998. DOE believes that its own discussions with ignition component suppliers during the ANOPR phase of this rulemaking may represent more current technologies and costs. Therefore, DOE has decided to retain the proposed incremental manufacturing costs in today's final rule.

*C. Life-Cycle Cost and Payback Period Analyses*

The purpose of the LCC and PBP analyses is to evaluate the economic impacts of possible new energy conservation standards for cooking products on individual consumers. The LCC is the total consumer expense over the life of the product, including purchase and installation expense and operating costs (energy expenditures, repair costs, and maintenance costs). The PBP is the number of years it would take for the consumer to recover the increased costs of purchasing a higher efficiency product through energy savings. To calculate LCC, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the product. DOE measured the change in LCC and the change in PBP associated with a given efficiency level relative to a base-case forecast of product efficiency. The base-case forecast reflects the market in the absence of amended mandatory energy conservation standards.

As part of the LCC and PBP analyses, DOE developed data that it used to establish product prices, installation costs, annual household energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates.

DOE calculated the LCC and payback periods for cooking products for a nationally representative set of housing units, which was selected from the Energy Information Administration (EIA) Residential Energy Consumption

[12] Please see the following Web site for further information: *http://www.bls.gov/pPI.*

Survey (RECS).[13] Similar to the October 2008 NOPR, the analysis for today's final rule used the 2001 RECS. (EIA had not yet released the 2005 RECS when the analysis was performed. Although DOE was unable to use the most recent RECS, the 2001 version still offers a relatively recent national representation of how consumers utilize cooking products. Also, no other public survey provides a representative national household sample indicating how frequently consumers use their cooking appliances.) By using a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with cooking product use.

For each sample household, DOE determined the energy consumption for the cooking product and the energy price. DOE calculated the LCC associated with a baseline cooking product for each household. To calculate the LCC savings and PBP associated with products meeting higher efficiency standards, DOE substituted the baseline unit with a more efficient design.

Table IV.1 summarizes the approaches and data DOE used to derive the inputs to the LCC and PBP calculations for the October 2008 NOPR, and the changes it made for today's final rule. For this final rule, DOE did not introduce changes to the LCC and PBP analyses methodology described in the October 2008 NOPR. However, DOE revised its energy prices and energy price forecasts based upon the most recently available data from EIA. Chapter 8 of the TSD accompanying this notice contains detailed discussion of the methodology utilized for the LCC and PBP analyses, as well as the inputs developed for the analyses.

TABLE IV.1—SUMMARY OF INPUTS AND KEY ASSUMPTIONS IN THE LCC AND PBP ANALYSES

| Inputs | October 2008 NOPR | Changes for the final rule |
|---|---|---|
| **Affecting Installed Costs** | | |
| Product Price | Derived by multiplying manufacturer cost by manufacturer, retailer markups and sales tax. | No change. |
| Installation Cost | Baseline cost based on RS Means *Mechanical Cost Data*, 2008.[14] Based the percentage of households with gas cooking products that would need to install an electrical outlet on requirements in the National Electrical Code (NEC). Determined that only households built before 1960 would require the installation of an outlet. Overall, estimated that 10 percent of households with gas standard ovens and 4 percent of households with gas cooktops would need to install an electrical outlet to accommodate designs that require electricity. Based electrical outlet installation costs on requirements in the NEC. | No change. |
| **Affecting Operating Costs** | | |
| Annual Energy Use | Based on recent estimates from the 2004 "California Residential Appliance Saturation Survey"[15] (RASS) and the Florida Solar Energy Center[16] (FSEC). Used 2001 RECS data to establish the variability of annual cooking energy consumption. Included standby power consumption for microwave ovens. | No change. |
| Energy Prices | Electricity: Based on EIA's 2006 Form 861 data.[17]<br>Natural Gas: Based on EIA's 2006 *Natural Gas Monthly*[18].<br>Variability: Regional energy prices determined for 13 regions. | Electricity: Updated using EIA's 2007 Form 861 data.<br>Natural Gas: Updated using EIA's 2007 *Natural Gas Monthly*.<br>Variability: No change. |
| Energy Price Trends | Forecasted with EIA's *Annual Energy Outlook (AEO) 2008*. | Reference Case forecasts updated with EIA's *AEO2009* Early Release.[19] *AEO2009* Early Release *does not provide High-Growth and Low-Growth forecasts, Scaled AEO2008 High-Growth and Low-Growth forecasts by the ratio of AEO2009 and AEO2008 Reference Case forecasts to estimate high-growth and low-growth price trends.* |
| Repair and Maintenance Costs. | For gas cooktops and standard ovens, accounted for increased costs associated with glo-bar or electronic spark ignition systems relative to standing pilot ignition systems. For all standard levels for all other product classes, estimated no change in costs between products more efficient than baseline products. | No change. |
| **Affecting Present Value of Annual Operating Cost Savings** | | |
| Product Lifetime | Based on data from *Appliance Magazine*,[20] past DOE TSDs, and the California Measurement Advisory Committee (CALMAC).[21] Variability and uncertainty characterized with Weibull probability distributions. | No change. |

[13] U.S. Department of Energy—Energy Information Administration, *Residential Energy Consumption Survey, 2001 Public Use Data Files (2001).* Available at: *http://www.eia.doe.gov/emeu/recs/recs2001/publicuse2001.html.*

TABLE IV.1—SUMMARY OF INPUTS AND KEY ASSUMPTIONS IN THE LCC AND PBP ANALYSES—Continued

| Inputs | October 2008 NOPR | Changes for the final rule |
|---|---|---|
| Discount Rates | Approach based on the finance cost of raising funds to purchase appliances either through the financial cost of any debt incurred to purchase products, or the opportunity cost of any equity used to purchase products. Primary data source is the Federal Reserve Board's *Survey of Consumer Finances* (SCF) for 1989, 1992, 1995, 1998, 2001, and 2004[22]. | No change. |
| **Affecting Installed and Operating Costs** | | |
| Effective Date of New or Amended Standards. | 2012 | No change. |
| Base-Case Efficiency Distributions. | Gas cooktops: 7% at baseline; 93% with electronic spark ignition. | No change. |
| | Gas standard ovens: 18% at baseline; 74% with glo-bar ignition; 8% with electronic spark ignition. | No change. |
| | Microwave ovens: 100% at baseline EF | No change. |
| | All other cooking products: 100% at baseline | No change. |

1. Product Prices

To calculate the product prices faced by consumers, DOE multiplied the manufacturing costs developed from the engineering analysis by the supply chain markups it developed (along with sales taxes). To calculate the final installed prices, DOE added installation costs to the consumer product prices. In response to the October 2008 NOPR, interested parties provided no additional comment on DOE's methods for establishing consumer product prices. As a result, DOE used the same supply chain markups for the final rule that were developed for the October 2008 NOPR. See chapter 7 of the TSD accompanying this notice for additional information.

2. Installation Cost

Installation costs include labor, overhead, and any miscellaneous materials and parts. For the October 2008 NOPR and today's final rule, DOE used data from the ''RS Means Mechanical Cost Data, (2008),'' on labor requirements to estimate installation costs for cooking products.

For the October 2008 NOPR, DOE did not include an installation cost for microwave ovens. Electrolux stated that over-the-range (OTR) microwave ovens do have an installation cost. (Electrolux, Public Meeting Transcript, No. 40.5 at p. 123) DOE acknowledges that OTR microwave ovens incur installation costs. However, as noted below, because DOE estimated that the installation cost does not change with product efficiency, the omission of this cost for microwave ovens has no effect on the LCC saving and PBP results.

For many cooking products, DOE estimated that installation costs would be the same for different efficiency levels. For gas cooktops and gas standard ovens, DOE evaluated the impact that eliminating standing pilot ignition systems would have on the installation cost. Peerless-Premier stated that eliminating pilots would affect customers who live in older houses, apartments, and manufactured homes without a power receptacle located at the range site. (Peerless-Premier, No. 42 at pp. 1–2) For the October 2008 NOPR and today's final rule, DOE considered the percentage of households with gas ranges, cooktops, and ovens that would require the installation of an electrical outlet in the kitchen to accommodate a gas cooking product without standing pilot ignition, as well as the cost of installing an electrical outlet.

For the October 2008 NOPR, DOE reviewed the gas oven and gas cooktop household samples to establish which houses may require installation of an outlet. DOE was able to determine the composition of the household sample of particular vintage (year built) groupings by conducting an assessment of National Electrical Code (NEC) requirements over time to help determine which homes may need an electrical outlet to accommodate a gas cooking product that requires electricity. Because the NEC requires spacing electrical outlets every 6 feet for homes built since 1960, DOE concluded that homes built after 1959 would not need an additional outlet. Pre-1960 homes represent 57 percent of the standard gas oven sample and 54 percent of the gas cooktop sample. Based on shipments data of gas cooking products indicating that fewer than 7 percent and 18 percent of gas cooktops and standard ovens, respectively, came equipped with standing pilots, DOE also concluded that many pre-1960 homes already have a gas cooking product without standing pilot ignition, which implies that they would not need to install an additional outlet.

The Joint Comment asserted that DOE erroneously assumed that 100 percent of pre-1960 homes with gas cooktops and ovens do not have adequate electrical outlets, without regard to the extensive number of kitchens that have been remodeled since 1960. (Joint Comment, No. 44 at p. 11) EEI made a similar point. (EEI, Public Meeting Transcript, No. 40.5 at pp. 111–112) In response, DOE did not assume that all pre-1960 homes with gas cooktops and gas ovens would require an electrical outlet. Rather, it concluded that only those households that currently have a gas cooking product with standing pilot ignition would need to install an electrical outlet to accommodate a gas cooking product without standing pilot ignition. Based on the percentage of recent shipments of gas cooking products with standing pilots and the fraction of the household sample built

[14] RS Means, *Mechanical Cost Data* (30th Annual Edition) (2008). Available for purchase at *http://www.rsmeans.com/bookstore/*.

[15] Please see the following Web site for further information: *http://www.energy.ca.gov/appliances/rass/*.

[16] Please see the following Web site for further information: *http://www.fsec.ucf.edu/en/*.

[17] Please see the following Web site for further information: *http://www.eia.doe.gov*.

[18] Please see the following Web site for further information: *http://www.eia.doe.gov*.

[19] Please see the following Web site for further information: *http://www.eia.doe.gov/oiaf/aeo/index.html?featureclicked=1&*.

[20] Please see the following Web site for further information: *http://www.appliancemagazine.com*.

[21] Please see the following Web site for further information: *http://www.calmac.org*.

[22] Please see the following Web site for further information: *http://www.federalreserve.gov*.

before 1960, DOE estimated that 10 percent of the overall gas standard oven household sample would need to install an electrical outlet to accommodate a gas standard oven that requires electricity to operate. It is worth noting that some portion of gas cooking products with standing pilot ignition is evidently purchased by consumers in post-1959 homes, even though they have an electrical outlet adequate to accommodate a gas cooking product without standing pilot ignition.

AGA and AHAM stated that DOE's approach should not consider all gas cooking product consumers, but only the market for gas cooking products that utilize standing pilot ignition systems. They believe the resulting weighted-average installation cost for all gas cooking products would be greater than DOE's estimate. (AGA, No. 46 at pp. 3–4; AHAM, No. 47 at p. 2) As described above, DOE did estimate the share of the gas oven and gas cooktop household samples that still use standing pilot ignition systems, and further estimated the fraction of those homes that may require installation of an outlet to accommodate a gas cooking product that requires electricity to operate. DOE correctly calculated the respective weighted-average installation costs for all homes with either gas cooktops or ovens, although the weighted averages are reported for informational purposes only and do not directly figure into the LCC calculations. For further details on the development of the electrical outlet installation cost and the percentage of households requiring an outlet, see chapter 8 of the TSD accompanying this notice.

3. Annual Energy Consumption

In the October 2008 NOPR, DOE based its estimates of annual energy use for cooking products (except microwave ovens) on results from the 2004 California Residential Appliance Saturation Survey (RASS) and the Florida Solar Energy Center (FSEC.). For today's final rule, DOE continued to rely on these sources, because they are the latest available public sources describing the field consumption of cooking products. In addition, DOE continued to use the 2001 RECS data to establish the variability of annual energy consumption for cooktops and ovens. The 2001 RECS is the most recently available public data source that indicates the variability of cooking product usage in U.S. households.

For microwave ovens, DOE used the 2004 RASS to estimate the product's annual energy consumption, and it used the 2001 RECS data to establish the variability of annual cooking energy consumption. For today's final rule, DOE continued to use the above approaches. As noted above, the 2004 RASS is the latest available public data source describing the average field consumption of microwave ovens, and the 2001 RECS is the most recently available public data source that indicates the variability of microwave oven usage in U.S. households. See chapter 6 of the TSD accompanying this notice for further details.

4. Energy Prices

DOE derived average electricity and natural gas prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately. For Census divisions containing one of these large States, DOE calculated the regional average values minus the data for the large State.

DOE estimated residential electricity prices for each of the 13 geographic areas based on data from EIA Form 861, *Annual Electric Power Industry Report.* DOE calculated an average residential electricity price by first estimating an average residential price for each utility by dividing the residential revenues by residential kilowatt-hour sales and then calculating a regional average price by weighting each utility with customers in a region by the number of residential consumers served in that region. The calculations for today's final rule used the most recent available data from 2007.

DOE estimated residential natural gas prices in each of the 13 geographic areas based on data from the EIA publication *Natural Gas Monthly.* For the October 2008 NOPR, DOE used the data for 2006 to calculate an average summer and winter price for each area. For today's final rule, DOE used 2007 data from the same source. DOE calculated an average natural gas price by first calculating the average prices for each State, and then calculating a regional price by weighting each State in a region by its population. This method differs from the method used to calculate electricity prices, because EIA does not provide consumer-level or utility-level data on gas consumption and prices.

To estimate the trends in electricity and natural gas prices for the October 2008 NOPR, DOE used the price forecasts in EIA's *Annual Energy Outlook (AEO) 2008.* To arrive at prices in future years, DOE multiplied the average prices described above by the forecast of annual average price changes in *AEO2008.* For today's final rule, DOE updated its energy price forecasts to those in the *AEO2009* Early Release. Because the *AEO* forecasts prices only to 2030, DOE followed past guidelines provided to the Federal Energy Management Program by EIA and used the average rate of change during 2020–2030 to estimate the price trends after 2030.

The spreadsheet tools used to conduct the LCC and PBP analyses allow users to select either the *AEO's* high-growth case or low-growth case price forecasts to estimate the sensitivity of the LCC and PBP to different energy price forecasts. The *AEO2009* Early Release provides only forecasts for the reference case. Therefore, for the final rule, DOE scaled the *AEO2008* high-growth case or low-growth forecasts by the ratio of *AEO2009* and *AEO2008* reference case forecasts to estimate high-growth and low-growth price trends.

The Joint Comment recommended that DOE conduct a sensitivity analysis using other forecasts in addition to the *AEO,* as they believe that the *AEO* has estimated lower electricity prices than most other forecasts. (Joint Comment, No. 44 at p. 11) As mentioned above, DOE included the *AEO's* high-growth case and low-growth case price forecasts in its spreadsheet tools to estimate the sensitivity of the LCC and PBP results to different energy price forecasts. *AEO's* high-economic-growth and low-economic-growth cases show the effects of alternative economic growth assumptions on the energy market projections. In the high-growth case, real gross domestic product (GDP) growth averages 3.0 percent per year, as a result of higher assumed growth rates for the labor force, non-farm employment, and non-farm labor productivity. With higher productivity gains and employment growth, inflation and interest rates are lower than in the reference case. In the low-growth case, growth in real GDP is 1.8 percent per year, as a result of lower assumed growth rates for the labor force, non-farm employment, and labor productivity. Consequently, the low-growth case shows higher inflation and interest rates and slower growth in industrial output and employment than are projected in the reference case. DOE believes the *AEO* alternative forecasts provide a suitable range that brackets the forecasts resulting from other energy-economy models. In addition, the Joint Comment provides no specific information on any other forecasts or on why *AEO's* high-growth and low-growth cases do not provide a reasonable range of forecasts. As a result, DOE has concluded that *AEO's* high-growth and low-growth cases provide an adequate basis to examine the sensitivity of LCC and PBP results to other price forecasts.

The Joint Comment stated that to realistically depict energy prices in the future, DOE must consider the impact of carbon control legislation, since such legislation is very likely. The Joint Comment also noted that there are regional cap-and-trade programs in effect in the Northeast (Regional Greenhouse Gas Initiative (RGGI)) and the West (Western Climate Initiative (WCI)) that will affect the price of electricity but are not reflected in the *AEO* energy price forecasts. (Joint Comment, No. 44 at p. 12) Earthjustice stated that Federal caps will likely be in place by the time new standards become effective, so DOE should increase its electricity prices to reflect the cost of complying with emission caps. (Earthjustice, Public Meeting Transcript, No. 40.5 at pp. 195–196) In response, DOE notes that the shape of Federal carbon control legislation, and the ensuing cost of carbon mitigation to electricity generators, is as yet too uncertain to incorporate into the energy price forecasts that DOE uses. The costs of carbon mitigation to electricity generators resulting from the regional programs are also very uncertain over the forecast period for this rulemaking. Even so, EIA did include the effect of the RGGI in its *AEO2009* Early Release energy price forecasts, but WCI did not provide sufficient detail for EIA to model the impact of the WCI on energy price forecasts. Therefore, the energy price forecasts used in today's final rule do include the impact of one of the two regional cap-and-trade programs to the extent possible.

5. Repair and Maintenance Costs

Repair costs are associated with repairing or replacing components that have failed in the appliance, whereas maintenance costs are associated with maintaining the operation of the product.

For the October 2008 NOPR, DOE contacted six contractors in different States to estimate whether repair and maintenance costs differ between standing pilot and non-standing pilot ignition systems. Based on the contractors' input, DOE determined that standing pilots are less costly to repair and maintain than either electric glo-bar/hot surface ignition systems (used in most gas ovens) or electronic spark ignition systems (used in gas cooktops and a small percentage of gas ovens); that standing pilot ignition systems require repair and maintenance every 10 years to clean valves; and that electric glo-bar/hot surface ignition systems require glo-bar replacement approximately every 5 years. 73 FR 62034, 62064 (Oct. 17, 2008). Electrolux stated that its testing indicates that glo-bar ignition systems tend to hold their life, but it did not provide data to support this point. (Electrolux, Public Meeting Transcript, No. 40.5 at p. 112) In the absence of new data from Electrolux, DOE decided to continue to use the information provided by the contractors from which it collected data. In the case of electronic ignition systems, control modules tend to last about 10 years. The electrodes/igniters can fail because of hard contact from pots or pans, although failures are rare.

Based on the above findings, DOE estimated an average cost comprised of a mix of maintenance and repair costs. For standing pilot ignition systems, DOE estimated a cost of $126 occurring in the tenth year of the product's life. For electric glo-bar/hot surface ignition systems, DOE estimated an average cost of $147 occurring every fifth year during the product's lifetime. For electronic spark ignition systems, DOE estimated an average cost of $178 occurring in the tenth year of the product's life. AGA generally agreed with DOE's approach for consideration of maintenance of standing pilots and electronic ignition systems. However, AGA suggested that DOE use the incremental manufacturing cost for electronic ignition systems as a basis for developing the maintenance costs for these systems. Using this approach, AGA reasoned that the resultant maintenance costs would be higher than DOE estimated. (AGA, No. 46 at p. 4) DOE's approach resulted in a combined maintenance and repair cost that is well above the incremental manufacturing cost for electronic ignition systems. Therefore, DOE retained its approach for estimating electronic ignition maintenance costs for today's final rule as it captures more costs than solely the manufacturing costs of the electronic ignition components. See chapter 8 of the TSD accompanying this notice for further information regarding these estimates.

6. Product Lifetime

For the October 2008 NOPR and today's final rule, DOE used a variety of sources to establish low, average, and high estimates for product lifetime. DOE established average product lifetimes of 19 years for conventional electric and gas cooking products and 9 years for microwave ovens. DOE characterized residential cooking product lifetimes with Weibull probability distributions. See chapter 8 of the TSD accompanying this notice for further details on the sources used to develop product lifetimes, as well as the use of Weibull distributions.

7. Discount Rates

To establish discount rates for cooking products for the October 2008 NOPR and today's final rule, DOE derived estimates of the finance cost of purchasing these appliances. Because the purchase of products for new homes entails different finance costs for consumers than the purchase of replacement products, DOE used different discount rates for new construction and replacement installations.

DOE estimated discount rates for new-housing purchases using the effective real (after inflation) mortgage rate for homebuyers. This rate corresponds to the interest rate after deduction of mortgage interest for income tax purposes and after adjusting for inflation. DOE used the Federal Reserve Board's Survey of Consumer Finances (SCF) for 1989, 1992, 1995, 1998, and 2001 mortgage interest rates. After adjusting for inflation and interest tax deduction, effective real interest rates on mortgages across the six surveys averaged 3.2 percent.

For replacement purchases, DOE's approach for deriving discount rates involved identifying all possible debt or asset classes that might be used to purchase replacement products, including household assets that might be affected indirectly. DOE estimated the average shares of the various debt and equity classes in the average U.S. household equity and debt portfolios using data from the SCFs from 1989 to 2004. DOE used the mean share of each class across the six sample years (1989, 1992, 1995, 1998, 2001, 2004) as a basis for estimating the effective financing rate for replacement products. DOE estimated interest or return rates associated with each type of equity and debt using SCF data and other sources. The mean real effective rate across the classes of household debt and equity, weighted by the shares of each class, is 5.6 percent.

See chapter 8 of the TSD accompanying this notice for further details on the development of discount rates for cooking products.

8. Effective Date of the Amended Standards

The effective date is the future date when parties subject to the requirements of a new standard must begin compliance. DOE assumes that any new energy conservation standards adopted in this rulemaking would become effective 3 years after the final rule is published in the **Federal Register**. Therefore, for the purpose of the analysis, the amended standard is

assumed to be effective March 2012. DOE calculated the LCC for the appliance consumers as if they would purchase a new product in the year the standard takes effect.

9. Product Energy Efficiency in the Base Case

For the LCC and PBP analyses, DOE analyzes candidate standard levels relative to a baseline efficiency level. However, some consumers may already purchase products with efficiencies greater than the baseline product levels. Thus, to accurately estimate the percentage of consumers that would be affected by a particular standard level, DOE considered the distribution of product efficiencies that consumers are expected to purchase under the base case (*i.e.*, the case without new energy conservation standards). DOE refers to this distribution of product of efficiencies as a base-case efficiency distribution.

Using the base-case efficiency distributions, DOE assigned a specific product efficiency to each sample household. If a household were assigned a product efficiency greater than or equal to the efficiency of a specific standard level under consideration, the LCC calculation would show that this household would not be affected by that standard level.

Unfortunately, little is known about the distribution of cooking product efficiencies that consumers currently purchase. Whirlpool stated that it is not aware of data on the number of consumers purchasing electric cooking products that are more efficient than the baseline products in the analysis. (Whirlpool, No. 50 at p. 4) In the absence of any additional data for electric cooking products and gas self-cleaning ovens, DOE continued to estimate that 100 percent of the market will be at the baseline efficiency levels in 2012.

For gas cooktops and gas standard ovens, available data allowed DOE to estimate the percentage of units sold that have standing pilot lights. DOE developed the market share of gas standard ovens with standing pilots based on actual shipments data, the most recent being data from the Appliance Recycling Information Center (ARIC) for 1997, 2000, and 2004.[23] Based on the ARIC data, the entire market share of products without standing pilots should be allocated to standard level 1 (products with glo-bar ignition). But based on information collected from contractors, DOE estimated that 10 percent of products without standing pilots use spark ignition systems. As a result, DOE allocated 90 percent of the market share of products without standing pilots to standard level 1 (with glo-bar ignition) and the remaining 10 percent to standard level 1a (with spark ignition).

Table IV.2 shows the market shares of the efficiency levels in the base case for gas cooktops and gas standard ovens. Standard level 1 represents products without standing pilot light ignition systems.

TABLE IV.2—GAS COOKTOPS AND GAS STANDARD OVENS: BASE CASE MARKET SHARES

| Gas cooktops | | | Gas standard ovens | | |
|---|---|---|---|---|---|
| Standard level | EF | Market share % | Standard level | EF | Market share % |
| Baseline | 0.156 | 6.8 | Baseline | 0.0298 | 17.6 |
| 1 | 0.399 | 93.2 | 1* | 0.0536 | 74.2 |
| 2 | 0.420 | 0 | 2 | 0.0566 | 0 |
| | | | 3 | 0.0572 | 0 |
| | | | 4 | 0.0593 | 0 |
| | | | 5 | 0.0596 | 0 |
| | | | 6 | 0.0600 | 0 |
| | | | 1a* | 0.0583 | 8.2 |

*For gas standard ovens, candidate standard levels 1 and 1a correspond to designs that are used for the same purpose—to eliminate the need for a standing pilot—but the technologies for each design are different. Candidate standard level 1 is a hot surface ignition device, whereas candidate standard level 1a is a spark ignition device.

For microwave ovens, very little is known about the distribution of product efficiencies that consumers currently purchase. For the October 2008 NOPR and the final rule, DOE estimated that 100 percent of the microwave oven market is at the baseline efficiency level (EF = 0.557).

10. Inputs to Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more efficient products through operating cost savings compared to baseline products. The simple payback period does not account for changes in operating expense over time or the time value of money. Payback periods greater than the life of the product mean that the increased total installed costs are not recovered in reduced operating expenses.

The inputs to the PBP calculation are the total installed cost of the product to the customer for each efficiency level and the annual (first-year) operating expenditures for each efficiency level. The PBP calculation uses the same inputs as the LCC analysis, except that energy price trends and discount rates are not needed.

11. Rebuttable Presumption Payback Period

As noted above, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a)), establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard,'' as calculated under the test procedure in place for that standard. For each TSL, DOE determined the value of the first year's energy savings by calculating the quantity of those savings in accordance with DOE's test procedure, and multiplying that amount by the average energy price forecast for the year in which a new standard would be expected to take effect—in this case, 2012.

[23] Appliance Recycling Information Center, INFOBulletin #8, ''Applications in Appliances'' (March 2005). Please see the following Web site for further information: *http://www.aham.org/industry/ht/action/GetDocumentAction/id/5370.*

DOE also received comments addressing the topic of using a rebuttable presumption payback period to establish the economic justification of an energy conservation standard level. The Joint Comment and Earthjustice stated that DOE's view that consideration of a full range of impacts is necessary because the rebuttable presumption payback period criterion is not sufficient for determining economic justification does not reflect the extent to which the rebuttable presumption analysis constrains DOE's authority to reject standards based on economic impacts. (Joint Comment, No. 44 at appendix B, p. 1; Earthjustice, Public Meeting Transcript, No. 40.5 at p. 130) The Joint Comment claimed that in 42 U.S.C. 6295(o)(2)(B)(iii), Congress erected a significant barrier to DOE's rejection, on the basis of economic justifiability, of standard levels to which the rebuttable presumption applies. These commenters also claimed that the fact that DOE seems to prefer to proceed under the seven-factor test contained in 42 U.S.C. 6295(o)(2)(B)(i) is not pertinent. The Joint Comment agreed with DOE that analysis under the seven factor test is necessary and has typically supported standards with paybacks longer than 3 years. However, the Joint Comment stated that DOE's decision-making must reflect the expressed intent of Congress that the highest standard level resulting in cost recovery within 3 years constitutes the presumptive lowest standard level that DOE must adopt (Joint Comment, No. 44 at appendix B, pp. 1–2)

DOE does consider both the rebuttable presumption payback criteria, as well as a full analysis including all seven relevant statutory criteria under 42 U.S.C. 6295(o)(2)(B)(i) when examining potential standard levels. However, DOE believes that the commenters are misinterpreting the statutory provision in question. The Joint Comment and Earthjustice present one possible reading of an ambiguous provision (*i.e.*, that DOE need not look beyond the results of the rebuttable presumption inquiry), but DOE believes that such an approach is neither required nor appropriate, because it would ask the agency to potentially ignore other relevant information that would bear on the selection of the most stringent standard level that meets all applicable statutory criteria. The commenters' interpretation would essentially restrict DOE from being able to rebut the findings of the preliminary presumptive analysis. However, the statute contains no such restriction, and such an approach would hinder DOE's efforts to base its regulations on the best available information.

Similarly, DOE believes that the Joint Comment misreads the statute in calling for a level that meets the rebuttable presumption test to serve as a minimum level when setting the final energy conservation standard. To do so would not only eliminate the ''rebuttable'' aspect of the presumption but would also lock in place a level that may not be economically justified based upon the full complement of statutory criteria. DOE is already obligated under EPCA to select the most stringent standard level that meets the applicable statutory criteria, so there is no need to tie the same requirement to the rebuttable presumption.

*D. National Impact Analysis—National Energy Savings and Net Present Value*

1. General

DOE's NIA assesses the national energy savings, as well as the national NPV of total consumer costs and savings, expected to result from new standards at specific efficiency levels. DOE applied the NIA 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, product costs, and NPV for each product class from 2012 through 2042. The forecasts provide annual and cumulative values for all four parameters. In addition, DOE incorporated into its NIA spreadsheet the ability to analyze sensitivity of the results to forecasted energy prices and product efficiency trends.

Table IV.3 summarizes the approach and data DOE used to derive the inputs to the NES and NPV analyses for the October 2008 NOPR and the changes made in the analyses for today's final rule. A discussion of the inputs and the changes follows. (See chapter 11 of the TSD accompanying this notice for further details.)

TABLE IV.3—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NPV ANALYSES

| Inputs | October 2008 NOPR | Changes for the final rule |
|---|---|---|
| Shipments | Annual shipments from Shipments Model | See Table IV.4. |
| Effective Date of Standard | 2012 | No change. |
| Base-Case Forecasted Efficiencies. | Shipment-weighted efficiency (SWEF) determined in the year 2005. SWEF held constant over forecast period of 2005–2042. | No change. |
| Standards-Case Forecasted Efficiencies. | ''Roll-up'' scenario used for determining SWEF in the year 2012 for each standards case. SWEF held constant over forecast period of 2012–2042. | No change. |
| Annual Energy Consumption per Unit. | Annual weighted-average values as a function of SWEF. | No change. |
| Total Installed Cost per Unit | Annual weighted-average values as a function of SWEF. | No change. |
| Energy Cost per Unit | Annual weighted-average values a function of the annual energy consumption per unit and energy prices. | No change. |
| Repair Cost and Maintenance Cost per Unit. | Incorporated changes in repair costs for non-standing pilot ignition systems. | No change. |
| Escalation of Energy Prices | *AEO2008* forecasts (to 2030) and extrapolation to 2042 | Updated to *AEO2009 Early Release* forecasts for the Reference Case. *AEO2009 Early Release* does not provide High-Growth and Low-Growth forecasts; scaled *AEO2008* High-Growth and Low-Growth forecasts by the ratio of *AEO2009* and *AEO2008* Reference Case forecasts to estimate high-growth and low-growth price trends. |

TABLE IV.3—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NPV ANALYSES—Continued

| Inputs | October 2008 NOPR | Changes for the final rule |
|---|---|---|
| Energy Site-to-Source Conversion. | Conversion varies yearly and is generated by DOE/EIA's National Energy Modeling System (NEMS) program (a time-series conversion factor; includes electric generation, transmission, and distribution losses). | No change. |
| Effect of Standards on Energy Prices. | Determined but found not to be significant | No change. |
| Discount Rate | 3 and 7 percent real | No change. |
| Present Year | Future expenses are discounted to year 2007 | No change. |

2. Shipments

The shipments portion of the NIA spreadsheet is a model that uses historical data as a basis for projecting future shipments of the appliance products that are the subject of this rulemaking. In projecting shipments, DOE accounted for three market segments: (1) New construction, (2) existing buildings (*i.e.*, replacing failed products), and (3) early replacements. DOE used the early replacement market segment to calibrate the shipments model to historical shipments data. For purposes of estimating the impacts of prospective standards on product shipments (*i.e.*, forecasting standards-case shipments), DOE considered the combined effects of changes in purchase price, annual operating cost, and household income on the magnitude of shipments.

Table IV.4 summarizes the approach and data DOE used to derive the inputs to the shipments analysis for the October 2008 NOPR and the changes it made for today's final rule. A discussion of the inputs and the changes follows.

TABLE IV.4—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE SHIPMENTS ANALYSIS

| Inputs | October 2008 NOPR | Changes for the final rule |
|---|---|---|
| Number of Product Classes | Seven classes for conventional cooking products; one class for microwave ovens. | No change. |
| New Construction Shipments | Determined by multiplying housing forecasts by forecasted saturation of cooking products for new housing. Housing forecasts based on *AEO2008* projections. New housing product saturations based on EIA's 2001 RECS. Forecasted saturations maintained at 2001 levels. | No change in approach. Housing forecasts updated with EIA *AEO2009* Early Release forecasts for the Reference Case. *AEO2009* Early Release does not provide High-Growth and Low-Growth forecasts, Scaled *AEO2008* High-Growth and Low-Growth forecasts by the ratio of *AEO2009* and *AEO2008* Reference Case forecasts to estimate high-growth and low-growth housing trends. |
| Replacements | Determined by tracking total product stock by vintage and establishing the failure of the stock using retirement functions from the LCC and PBP analysis. Retirement functions revised to be based on Weibull lifetime distributions. | No change. |
| Early Replacements | Used to calibrate Shipments Model to historical shipments data; 2 percent of the surviving stock per year is retired early. | No change. |
| Historical Shipments | Data sources include AHAM data submittal, AHAM *Fact Book*,[24] and *Appliance Magazine*. | No change. |
| Purchase Price, Operating Cost, and Household Income Impacts Due to Efficiency Standards. | For microwave ovens only, used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers between 1980 and 2002 to determine a ''relative price'' elasticity of demand. | No change. |
| Fuel Switching | Not considered | No change. |

a. New Construction Shipments

To determine new construction shipments, DOE used a forecast of housing starts coupled with product market saturation data for new housing. For new housing completions and mobile home placements, DOE adopted the projections from EIA's *AEO2008* through 2030 for the October 2008 NOPR. For today's final rule, DOE used the projections from EIA's *AEO2009* Early Release Reference Case. Because EIA had not yet released the 2005 RECS when the analysis was performed, DOE continued to use the 2001 RECS to establish cooking product market saturations for new housing.

b. Replacements

DOE estimated replacements using product retirement functions developed from product lifetimes. For the October 2008 NOPR and today's final rule, DOE used retirement functions based on Weibull distributions.

To calibrate each shipments model against historical shipments, DOE established an early replacement market segment. For the October 2008 NOPR and today's final rule, DOE determined that 2 percent of the surviving stock per year was replaced early.

[24] Association of Home Appliance Manufacturers, *2005 Major Appliance Fact Book*. Available for purchase at *http://www.aham.org/ht/d/ProductDetails/sku/40471101603*.

c. Purchase Price, Operating Cost, and Household Income Impacts

To estimate the combined effects on microwave oven shipments of increases in product purchase price and decreases in product operating costs due to new efficiency standards, DOE conducted a literature review and a statistical analysis on appliance price, efficiency, and shipments data for the October 2008 NOPR. DOE used purchase price and efficiency data specific to residential refrigerators, clothes washers, and dishwashers between 1980 and 2002 from AHAM *Fact Books*[25] to conduct regression analyses. DOE chose this particular set of appliances because of the availability of data to determine a price elasticity. These data indicate that there has been a rise in appliance shipments and a decline in appliance purchase price and operating costs over the time period. Household income has also risen during this time. To simplify the analysis, DOE combined the available economic information into one variable, termed the ''relative price,'' and used this variable in an analysis of market trends and to conduct a regression analysis. DOE's regression analysis suggests that the relative short-run price elasticity of demand, averaged over the three appliances, is −0.34. For example, a relative price increase of 10 percent results in a shipments decrease of 3.4 percent. Because the relative price elasticity incorporates the impacts from three effects (*i.e.*, purchase price, operating cost, and household income), the impact from any single effect is mitigated by changes in the other two effects.

Because DOE's forecast of shipments and national impacts due to standards spans 30 years, DOE also considered how the relative price elasticity is affected once a new standard takes effect. After the purchase price change, price elasticity becomes more inelastic over the years until it reaches a terminal value. For the October 2008 NOPR, DOE incorporated a relative price elasticity change that resulted in a terminal value of approximately one-third of the short-run elasticity. In other words, DOE determined that consumer purchase decisions become less sensitive over time to the initial change in the product's relative price. As implemented in the modeling of shipments forecasts, DOE estimates that the initial increase in purchase price due to a standard will have a more significant impact on product shipments in the short term than over the long term (*i.e.*, fewer consumers will forego appliance purchases years after the standards have been in place than when the standards initially take effect.) DOE received no comments on its analysis to estimate the combined effects of increases in product purchase price and decreases in operating costs on microwave oven shipments and, therefore, retained the approach for the final rule.

In contrast, DOE determined that the combined market of conventional electric and gas cooking products (*i.e.*, other than microwave ovens) is completely saturated. Thus, DOE assumed for the October 2008 NOPR that the considered standard levels would neither affect shipments nor cause shifts in electric and gas conventional cooking product market shares. 73 FR 62034, 62071 (Oct. 17, 2008). Because DOE received no comments on its approach, it continued to use it for today's final rule.

d. Fuel Switching

In the October 2008 NOPR, DOE concluded that the probability that the considered standard levels would cause shifts in electric and gas conventional cooking product market shares was sufficiently low that it was not necessary to consider it. 73 FR 62034, 62071–72 (Oct. 17, 2008). DOE received no comments on this issue and, therefore, retained the approach for today's final rule.

3. Other Inputs

a. Base-Case Forecasted Efficiencies

A key input to the calculations of NES and NPV are the energy efficiencies that DOE forecasts for the base case (without new standards). The forecasted efficiencies represent the annual shipment-weighted energy efficiency (SWEF) of the products under consideration over the forecast period (*i.e.*, from the estimated effective date of a new standard to 30 years after that date).

For the October 2008 NOPR, DOE first determined the distribution of product efficiencies currently in the marketplace to develop a SWEF for each product class for 2005. Using the SWEF as a starting point, DOE developed base-case efficiencies based on estimates of future efficiency increase. From 2005 to 2012 (2012 being the estimated effective date of a new standard), DOE estimated that there would be no change in the SWEF (*i.e.*, no change in the distribution of product efficiencies). Because there are no historical data to indicate how product efficiencies have changed over time, DOE estimated that forecasted efficiencies would remain at the 2012 level until the end of the forecast period, with one exception. Because historical data indicates a declining trend in the percentage of gas standard ranges equipped with standing pilot lights, DOE did forecast a decline in the market share of gas standard ranges equipped with standing pilot lights both to 2012 and after 2012. DOE recognizes the possibility that product efficiencies may change over time (*e.g.*, due to voluntary efficiency programs such as ENERGY STAR), but without historical information, DOE had no basis for estimating how much the product efficiencies may change. Thus, for the final rule, DOE maintained its forecast that efficiencies remain at the level estimated for 2012 for residential cooking products.

b. Standards-Case Forecasted Efficiencies

For its determination of each of the cases with alternative standard levels (''standards cases''), DOE used a ''roll-up'' scenario to establish the SWEF for 2012. DOE assumed that product efficiencies in the base case that do not meet the standard level under consideration would roll up to meet the new standard level. Also, DOE assumed that all product efficiencies in the base case that were above the standard level under consideration would not be affected by the standard. DOE made the same assumption regarding forecasted standards-case efficiencies as for the base case, namely, that forecasted efficiencies remained at the 2012 efficiency level until the end of the forecast period.

Again, DOE had no data to reasonably estimate how such efficiency levels might change over the next 30 years. By maintaining the same rate of increase for forecasted efficiencies in the standards case as in the base case (*i.e.*, no change), DOE retained a constant efficiency difference between the two cases over the forecast period. Although the assumed no-change trends may not reflect what would happen to base-case and standards-case product efficiencies in the future, DOE believes that maintaining a constant efficiency difference between the base case and standards case provides a reasonable estimate of the impact that standards have on product efficiency. It is more important to accurately estimate the efficiency difference between the standards case and base case than to accurately estimate the actual product efficiencies in the standards and base cases. Therefore, DOE retained the approach used in the October 2008 NOPR for the final rule.

[25] DOE used average purchase price and efficiency data provided in the 1987, 1988, 1993, 1995, 2000, and 2003 Fact Books.

c. Annual Energy Consumption

The annual energy consumption per unit depends directly on product efficiency. DOE used the SWEFs associated with the base case and each standards case, in combination with the annual energy data, to estimate the shipment-weighted average annual per-unit energy consumption under the base case and standards cases. The national energy consumption is the product of the annual energy consumption per unit and the number of units of each vintage, which depends on shipments.

As noted in section IV.D.2.c, DOE used a relative price elasticity to estimate standards-case shipments for microwave ovens, but not for conventional cooking products. As a result, shipments of microwave ovens forecasted under the standards cases are lower than under the base case. To avoid the inclusion of energy savings from reduced shipments of microwave ovens, DOE used the standards-case shipments projection and the standards-case stock to calculate the annual energy consumption for the standards cases.

d. Site-to-Source Conversion

To estimate the national energy savings expected from appliance standards, DOE uses a multiplicative factor to convert site energy consumption (energy use at the location where the appliance is operated) into primary or source energy consumption (the energy required to deliver the site energy). In the case of electrical energy, primary consumption includes the energy required for generation, transmission, and distribution. For the October 2008 NOPR and today's final rule, DOE used annual site-to-source conversion factors based on the version of NEMS that corresponds to *AEO2008*. These conversion factors account for natural gas losses from pipeline leakage and natural gas used for pumping energy and transportation fuel. For electricity, the conversion factors vary over time due to projected changes in generation sources (*i.e.*, the power plant types projected to provide electricity to the country). Since the *AEO* does not provide energy forecasts beyond 2030, DOE used conversion factors that remain constant at the 2030 values throughout the remainder of the forecast.

e. Total Installed Costs and Operating Costs

The increase in total annual installed cost is equal to the difference in the per-unit total installed cost between the base case and standards case, multiplied by the shipments forecasted in the standards case.

The annual operating cost savings per unit includes changes in energy, repair, and maintenance costs. DOE forecasted energy prices for the October 2008 NOPR based on *AEO2008*; it updated the forecasts for the final rule using data from *AEO2009* Early Release. For the October 2008 NOPR and today's final rule, DOE accounted for the repair and maintenance costs associated with the ignition systems in gas cooking products.

f. Discount Rates

DOE multiplies monetary values in future years by the discount factor to determine their present value. DOE estimated national impacts using 3- and 7-percent real discount rates, in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis (OMB Circular A–4 (Sept. 17, 2003), section E, ''Identifying and Measuring Benefits and Costs'').

The Joint Comment stated that DOE should use a 2- to 3-percent real discount rate for the national impact analyses. (Joint Comment, No. 44 at p. 11) It noted that societal discount rates are the subject of extensive academic research and the weight of academic opinion is that the appropriate societal discount rate is 3 percent or less. It urged DOE to give primary weight to results based on the lower of the discount rates recommended by OMB.

On this point, DOE notes that OMB Circular A–4 references an earlier Circular A–94, which states that a real discount rate of 7 percent should be used as a base case for regulatory analysis. The 7-percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It approximates the opportunity cost of capital and, according to Circular A–94, is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. OMB revised Circular A–94 in 1992 after extensive internal review and public comment. OMB found that the average rate of return to capital remains near the 7-percent rate estimated in 1992. Circular A–4 also states that when regulation primarily and directly affects private consumption, a lower discount rate is appropriate. ''The alternative most often used is sometimes called the social rate of time preference * * * the rate at which 'society' discounts future consumption flows to their present value.'' [26] It suggests that the real rate of return on long-term government debt may provide a fair approximation of the social rate of time preference, and states that over the last 30 years, this rate has averaged around 3 percent in real terms on a pre-tax basis. It concludes that ''for regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and 7 percent.'' [27] DOE finds that the guidance from OMB is reasonable, and thus it did not give primary weight to results derived using a 3-percent discount rate.

The Joint Comment stated that DOE should not apply a discount rate to physical units of measure, such as tons of emissions or quads of energy. (Joint Comment, No. 44 at p. 11) Consistent with Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, 51737 (Oct. 4, 1993), DOE discounts the monetized value of these emissions reductions using 3-percent and 7-percent discount rates in order to determine their present value for rulemaking purposes. Similarly, DOE discounts energy savings using 3-percent and 7-percent discount rates since the timing of the energy savings, like money saved, have value to consumers and the Nation. DOE recognizes that while financial investments can grow with time, physical quantities such as energy do not, so there are costs and benefits to the Nation associated with the timing of when of consuming the energy. In doing so, DOE follows the guidance of OMB regarding methodologies and procedures for regulatory impact analysis that affect more than one agency. Thus, DOE has reported both discounted and undiscounted values for the energy and environmental benefits from energy conservation standards.

g. Effects of Standards on Energy Prices

For the October 2008 NOPR, DOE conducted an analysis of the impact of reduced energy demand associated with possible standards on cooking products on natural gas and electricity prices. The analysis found that gas and electric demand reductions resulting from max-tech standards for residential cooking products would have no detectable change on the U.S. average wellhead natural gas price or the average user price of electricity. Therefore, DOE concluded that residential cooking

[26] OMB Circular A–4, ''Regulatory Analysis,'' Sept. 17, 2003, p. 33. Please see the following Web site for further information: *http://www.whitehouse.gov/omb/circulars/index.html.*

[27] OMB Circular A–4, ''Regulatory Analysis,'' Sept. 17, 2003, p. 34. Please see the following Web site for further information: *http://www.whitehouse.gov/omb/circulars/index.html.*

product standards will not provide additional economic benefits resulting from lower energy prices.

*E. Consumer Subgroup Analysis*

In analyzing the potential impact of new or amended standards on individual consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a national standard level. For the October 2008 NOPR, DOE used RECS data to analyze the potential effect of standards for residential cooking products on two consumer subgroups: (1) Households with low income levels, and (2) households comprised of seniors.

DOE also considered specific consumer subgroups that do not use or have access to electricity and could be affected by the elimination of standing pilot ignition systems, such as Amish and some Native American communities. DOE's market research for the October 2008 NOPR found that battery-powered electronic ignition systems have been implemented in other products, such as instantaneous gas water heaters, barbeques, and furnaces, and the use of such products is not expressly prohibited by applicable safety standards such as ANSI Z21.1. As noted in section III.C.2, DOE's research determined that, although there are currently no alternative ignition systems to standing pilots in gas cooking products that have been certified to ANSI Z21.1, DOE believes such certification could be attained and that gas cooking products suitable for households without electricity would likely be commercially available by the time these standards are in effect.

More details on the consumer subgroup analysis can be found in chapter 12 of the TSD accompanying this notice.

*F. Manufacturer Impact Analysis*

In determining whether a standard for cooking products is economically justified, the Secretary of Energy is required to consider ''the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.'' (42 U.S.C. 6295(o)(2)(B)(i)(I)) The statute also calls for an assessment of the impact of any lessening of competition as determined by the Attorney General. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE conducted the MIA to estimate the financial impact of higher efficiency standards on manufacturers of cooking products, and to assess the impact of such standards on employment and manufacturing capacity.

The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the GRIM, an industry cash-flow model customized for this rulemaking. The GRIM inputs characterize the industry cost structure, shipments, and revenues. This includes information from many of the analyses described above, such as manufacturing costs and prices from the engineering analysis and shipments forecasts. The key GRIM output is the INPV, which estimates the value of the industry on the basis of cash flows, expenditures, and investment requirements as a function of TSLs. Different sets of assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as product characteristics, characteristics of particular firms, and market and product trends, and it includes an assessment of the impacts of standards on subgroups of manufacturers that could be disproportionately affected by these standards.

For the October 2008 NOPR, DOE identified three manufacturers of gas-fired ovens, ranges, and cooktops with standing pilot lights. Two of the three are classified as small businesses under criteria prescribed by the Small Business Administration (SBA).[28] The SBA classifies a residential cooking appliance manufacturer as a small business if it has fewer than 750 employees. DOE categorized the two small businesses into their own subgroup as a result of their size and their concentration in the manufacture of residential cooking products. Each small manufacturer produces gas-fired cooking products with standing pilot ignition systems and derives over 25 percent of its total revenue from these appliances. Both small manufacturers produce only residential cooking appliances and have annual sales of $50 million to $60 million, whereas the third is a large, diversified appliance manufacturer. The two small cooking businesses are privately held and each company has fewer than 300 employees. 73 FR 62034, 62076 (Oct. 17, 2008). DOE interviewed one of these manufacturers, and also obtained from larger manufacturers information about the impacts of standards on these small manufacturers of conventional cooking products. 73 FR 62034, 62128 (Oct. 17, 2008). In addition, DOE received comments from one of the small manufacturers regarding the potential impacts of standards. (Peerless-Premier, No. 42 at pp. 1–2) See section VII.B for a discussion of DOE's determination of the economic impacts of today's final rule on small entities.

For the final rule, DOE updated the MIA results based on the total shipments and efficiency distributions estimated in the final rule NIA. For details of the MIA, see chapter 13 of the TSD accompanying this notice.

*G. Employment Impact Analysis*

Employment impacts include direct and indirect impacts. Direct employment impacts are changes in the number of employees for manufacturers of the appliance products that are subject to standards, their suppliers, and related service firms. The MIA addresses these impacts. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to (1) reduced spending by end users on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the purchase of new products, and (4) the effects of those three factors throughout the economy.

In developing the October 2008 NOPR and today's final rule, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET). ImSET [29] is a spreadsheet model of the U.S. economy that focuses on 188 sectors most relevant to industrial, commercial, and residential building energy use. ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among the 188 sectors. ImSET's national economic I–O structure is based on a 1997 U.S. benchmark table, especially aggregated to those sectors. For further details, see chapter 15 of the TSD accompanying this notice.

The Joint Comment stated that when weighing the economic costs and benefits of stronger efficiency standards, DOE must consider that adopting standards will increase employment. (Joint Comment, No. 44 at p. 13) As described in section VI.C.3, DOE uses ImSet to consider indirect employment

[28] For more information, see *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[29] Roop, J. M., M. J. Scott, and R. W. Schultz, *ImSET: Impact of Sector Energy Technologies* (PNNL–15273 Pacific Northwest National Laboratory) (2005). Available at *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-15273.pdf.*

impacts when evaluating alternative standard levels. Direct employment impacts on the manufacturers that produce cooking products are analyzed in the manufacturer impact analysis, as discussed in section IV.F.

*H. Utility Impact Analysis*

The utility impact analysis determines the changes to energy supply and demand that result from the end-use energy savings due to standards. DOE calculated these changes using the NEMS–BT computer model.[30] The analysis output includes a forecast of the total electricity generation capacity at each TSL.

DOE obtained the energy savings inputs associated with electricity and natural gas consumption savings from the NIA. Chapter 14 of the TSD accompanying this notice presents details on the utility impact analysis.

*I. Environmental Assessment*

DOE prepared an environmental assessment (EA) pursuant to the National Environmental Policy Act and the requirements of 42 U.S.C. 6295(o)(2)(B)(i)(VI) to determine the environmental impacts of standards for cooking products. Specifically, DOE estimated the reduction in total emissions of $CO_2$ and $NO_X$ using the NEMS–BT computer model. DOE also calculated a range of estimates for reduction in mercury (Hg) emissions using power sector emission rates. DOE also calculated the possible monetary benefit of $CO_2$, $NO_X$, and Hg reductions. Cumulative monetary benefits were determined using discount rates of 3 and 7 percent. The EA does not include the estimated reduction in power sector impacts of sulfur dioxide ($SO_2$), because DOE has determined that any such reduction resulting from an energy conservation standard would not affect the overall level of $SO_2$ emissions in the United States due to the presence of national caps on $SO_2$ emissions. These topics are addressed further below; see chapter 16 of the TSD for additional detail.

NEMS–BT is run similarly to the *AEO2008* NEMS, except that cooking product energy use is reduced by the amount of energy saved (by fuel type) due to the trial standard levels. The inputs of national energy savings come from the NIA analysis. For the EA, the output is the forecasted physical emissions. The net benefit of a standard is the difference between emissions estimated by NEMS–BT and the *AEO2008* Reference Case. The NEMS–BT tracks $CO_2$ emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects.

The Clean Air Act Amendments of 1990 set an emissions cap on $SO_2$ for all power generation. The attainment of the emissions cap is flexible among generators and is enforced through the use of emissions allowances and tradable permits. Because $SO_2$ emissions allowances have value, they will almost certainly be used by generators, although not necessarily immediately or in the same year a standard is in place. In other words, with or without a standard, total cumulative $SO_2$ emissions will always be at or near the ceiling, and there may be some timing differences among yearly forecasts. Thus, it is unlikely that there will be reduced overall $SO_2$ emissions from standards as long as the emissions ceilings are enforced. Although there may be no actual reduction in $SO_2$ emissions, there still may be an economic benefit from reduced demand for $SO_2$ emission allowances. Electricity savings decrease the generation of $SO_2$ emissions from power production, which can lessen the need to purchase $SO_2$ emissions allowance credits, and thereby decrease the costs of complying with regulatory caps on emissions.

Future emissions of $NO_X$ would have been subject to emissions caps under the Clean Air Interstate Rule (CAIR) issued by the U.S. Environmental Protection Agency on March 10, 2005.[31] 70 FR 25162 (May 12, 2005). CAIR would have permanently capped emissions in 28 eastern States and the District of Columbia (D.C.). As with the $SO_2$ emissions cap, a cap on $NO_X$ emissions would have meant that energy conservation standards are not likely to have a physical effect on $NO_X$ emissions in States covered by the CAIR caps. However, prior to the publication of the October 2008 NOPR, the CAIR was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) in its July 11, 2008 decision in *North Carolina* v. *Environmental Protection Agency*.[32] Therefore, for the October 2008 NOPR, DOE established a range of $NO_X$ reductions based on low and high emission rates (in metric kilotons of $NO_X$ emitted per terawatt-hour (TWh) of electricity generated) derived from the *AEO2008*. However, on December 23, 2008, the DC Circuit decided to allow CAIR to remain in effect until it is replaced by a rule consistent with the court's earlier opinion.[33] As a result, DOE used the NEMS–BT model for today's final rule to estimate the $NO_X$ emissions reductions due to standards. For the 28 eastern States and DC where CAIR is in effect, no $NO_X$ emissions reductions will occur due to the permanent cap. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits, if they were large enough. However, DOE determined that in the present case, such standards would not produce an environmentally related economic impact in the form of lower prices for emissions allowance credits, because the estimated reduction in $NO_X$ emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for $NO_X$ under the CAIR. In contrast, new or amended energy conservation standards would reduce $NO_X$ emissions in those 22 States that are not affected by CAIR. As a result, the NEMS–BT does forecast emission reductions from the cooking product standards considered in today's final rule.

Similar to $SO_2$ and $NO_X$, future emissions of Hg would have been subject to emissions caps under the Clean Air Mercury Rule [34] (CAMR), which would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010, but the CAMR was vacated by the D.C. Circuit in its decision in *New Jersey* v. *Environmental Protection Agency* [35] prior to publication of the October 2008 NOPR. However, the NEMS–BT model DOE used to estimate the changes in emissions for the proposed rule assumed that Hg emissions would be subject to CAMR emission caps. Because the emissions caps specified by CAMR would have applied to the entire country, DOE was unable to use the NEMS–BT model to estimate any changes in the quantity of mercury

[30] EIA approves the use of the name NEMS to describe only an official *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from AEO assumptions, the name NEMS–BT refers to the model as used here. (''BT'' stands for DOE's Building Technologies Program.) For more information on NEMS, refer to ''The National Energy Modeling System: An Overview,'' DOE/EIA–0581 (98) (Feb. 1998). Available at *http://tonto.eia.doe.gov/ftproot/forecasting/058198.pdf.*

[31] See *http://www.epa.gov/cleanairinterstaterule/.*

[32] 531 F.3d 896 (D.C. Cir. 2008).

[33] *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

[34] 70 FR 28606 (May 18, 2005).

[35] 517 F 3d 574 (D.C. Cir. 2008).

emissions that would result from standard levels it considered for the proposed rule. Instead, DOE used an Hg emission rate (in metric tons of Hg per energy produced) based on the *AEO2008*. Because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the metric tons of mercury emitted per TWh of coal-generated electricity. To estimate the reduction in mercury emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity associated with the standards considered. Because the CAMR has been vacated, DOE continued to use the approach it used for the October 2008 NOPR to estimate the Hg emission reductions due to standards for today's final rule.

In addition to electricity, the operation of gas cooking products requires use of fossil fuels and results in emissions of $CO_2$ and $NO_X$ at the sites where the appliances are used. NEMS–BT provides no means for estimating such emissions. Therefore, DOE calculated separate estimates of the effect of the potential standards on site emissions of $CO_2$ and $NO_X$ based on emissions factors derived from the literature. Natural gas was the only fossil fuel DOE accounted for in its analysis of standards for cooking products. Because natural gas combustion does not yield $SO_2$ emissions, DOE did not report the effect of the proposed standards on site emissions of $SO_2$.

For the October 2008 NOPR, DOE monetized reductions in $CO_2$ emissions due to standards based on a range of monetary values drawn from studies that attempt to estimate the present value of the marginal economic benefits likely to result from reducing greenhouse gas emissions. Several parties provided comments regarding the economic valuation of $CO_2$ for the October 2008 NOPR. Whirlpool did not support an attempt to value those emissions as part of this rulemaking. (Whirlpool, No. 50 at p. 8) EEI commented that utilities have embedded the cost of complying with existing environmental legislation in their price for electricity, and a similar approach may be reasonable for valuing reduced $CO_2$ emissions. (EEI, Public Meeting Transcript, No. 40.5 at pp. 194–195) The Joint Comment stated that DOE's valuation of avoided $CO_2$ emissions should use EIA's analysis of the Climate Security Act; the core scenario of this analysis yields a $17 price per ton of $CO_2$, with an annual 7.4 percent increase. (Joint Comment, No. 44 at p. 12) As discussed in section VI.C.6, DOE has continued to use the approach described in the October 2008 NOPR (73 FR 62034, 62107 (Oct. 17, 2008)) for its monetization of environmental emissions reductions for today's rule.

Although this rulemaking does not affect $SO_2$ emissions or $NO_X$ emissions in the 28 eastern States and D.C. where CAIR is in effect, there are markets for $SO_2$ and $NO_X$ emissions allowances. The market clearing price of $SO_2$ and $NO_X$ emissions allowances is roughly the marginal cost of meeting the regulatory cap, not the marginal value of the cap itself. Further, because national $SO_2$ and $NO_X$ emissions are regulated by a cap-and-trade system, the cost of meeting these caps is included in the price of energy. Thus, the value of energy savings already includes the value of $SO_2$ and $NO_X$ control for those consumers experiencing energy savings. The economic cost savings associated with $SO_2$ and $NO_X$ emissions caps is approximately equal to the change in the price of traded allowances resulting from energy savings multiplied by the number of allowances that would be issued each year. That calculation is uncertain because the energy savings from new or amended standards for cooking products would be so small relative to the entire electricity generation market that the resulting emissions savings would have almost no impact on price formation in the allowances market. These savings would most likely be outweighed by uncertainties in the marginal costs of compliance with $SO_2$ and $NO_X$ emissions caps.

## V. Discussion of Other Comments

Since DOE opened the docket for this rulemaking, it has received more than 42 comments from a diverse set of parties, including manufacturers and their representatives, members of Congress, energy conservation advocates, private citizens, and electric and gas utilities. Comments on the analytic methodologies DOE used are discussed in section IV of this preamble. Other comments DOE received in response to the October 2008 NOPR, limited to those pertaining to standards for cooking products, are addressed in this section.

### *A. Burdens and Benefits*

#### 1. Consideration of the Value of Avoided Environmental Impacts

The Joint Comment stated that DOE has not incorporated the value of $CO_2$ emissions reductions into the LCC and NPV analyses. The Joint Comment argues that, because the value of $CO_2$ emissions reductions affects the economic justification of standards, DOE must incorporate these effects into the LCC and NPV analyses. (Joint Comment, No. 44 at p. 12)

After consideration of this comment, DOE decided to continue to report these benefits separately from the direct benefits of energy savings (*i.e.*, the NPV of consumer net benefits). Neither EPCA nor the National Environmental Policy Act (NEPA) requires that the economic value of emissions reductions be incorporated in the net present value analysis of energy savings. However, DOE believes that considering the value of environmental emissions reductions separately from other impacts, when weighing the benefits and burdens of standards, provides the Department with a more robust understanding of the potential impacts of standards.

Similarly, for other emissions currently not priced (Hg nationwide and $NO_X$ in those States not covered by CAIR), only ranges of estimated economic values based on environmental damage studies of varying quality and applicability are available. DOE has also weighed these values separately from the direct benefits of energy savings.

### *B. Other Comments*

#### 1. Proposed Standards for Conventional Cooking Products

The Joint Comment stated that TSL 3 should be adopted for conventional cooking products rather than TSL 1. The Joint Comment specifically calls attention to the standard level for electric standard ovens under TSL 3, and states that this standard level satisfies the rebuttable presumption payback period. As a result, the Joint Comment concluded that TSL 3 is presumptively economically justified. (Joint Comment, No. 44 at p. 11) Earthjustice also stated that TSL 3 should be adopted but on grounds that it provided consumers with an economic benefit greater than TSL 1. (Earthjustice, Public Meeting Transcript, No. 40.5, p. 200)

As described in section VI.A, TSL 3 for conventional cooking products consists of performance standards for electric standard ovens, gas self-cleaning ovens, and electric coil cooktops, in addition to the presciptive requirements in TSL 1 of eliminating standing pilots in gas cooktops and gas standard ovens. Although the performance standards for electric standard ovens and electric cooktops at TSL 3 satisfy the rebuttable presumption payback period, as noted in section IV.C.11, DOE considers the

full range of criteria including impacts on consumers, manufacturers, and the environment, when determining whether these standards are economically justisfied.

## VI. Analytical Results and Conclusions

### *A. Trial Standard Levels*

DOE analyzed the benefits and burdens of a number of TSLs for the cooking products that are the subject of today's final rule. For the October 2008 NOPR, DOE based the TSLs on efficiency levels explored in the November 2007 ANOPR, and selected the TSLs on consideration of economic factors and current market conditions. DOE received no comments on the composition of the TSLs. Accordingly, for today's final rule, DOE considered the same TSLs it considered for the October 2008 NOPR.

Table VI.1 shows the TSLs and the corresponding product class efficiencies for conventional cooking products. As discussed in section III.C, DOE determined the design options that are technologically feasible and can be considered as measures to improve product efficiency. However, as discussed in chapters 3 and 4 of the TSD accompanying this notice, there are few design options available for improving the efficiency of these cooking products due to physical limitations on energy transfer to the food being cooked. This is particularly true for all cooktop and self-cleaning oven product classes. For electric cooktops, DOE was able to identify only a single design change for analysis. For gas cooktops and electric self-cleaning ovens, DOE was able to identify two design options for analysis. For gas self-cleaning ovens, DOE was able to identify three design options for analysis. Although DOE considered several design options for standard ovens, none significantly increased product efficiency with the exception of eliminating standing pilots for gas standard ovens. Eliminating standing pilots reduces an oven's overall gas consumption by more than 50 percent, whereas all other design options reduce gas consumption by approximately 2 percent. Therefore, DOE gave further consideration to only four TSLs for conventional cooking products, as described below.

TSL 1 represents the elimination of standing pilot ignition systems from gas cooking products. All other product classes are unaffected by TSL 1, including gas self-cleaning ovens. EPCA does not allow gas self-cleaning ovens to use standing pilot ignition systems because they already use electricity and come equipped with power cords to enable the self-cleaning cycle. Under TSL 1, the current prescriptive standard that prohibits the use of standing pilot ignition systems in gas cooking pilots equipped with power cords would be extended to all gas cooking products, regardless of whether the appliance is equipped with a power cord. Under TSL 1, DOE would not regulate the EF of any of the conventional cooking product classes and only standing pilot ignition systems would be affected.

TSL 2 for conventional cooking products consists of the candidate standard levels from each of the product classes that provide an economic benefit to a majority of consumers who are affected by the standard. Based on this criterion, only electric coil cooktops and electric standard ovens have candidate standard levels that differ from those in TSL 1. For the remaining five product classes, the results indicate that no candidate standard level provides an economic benefit to a majority of consumers.

TSL 3 for conventional cooking products consists of the same candidate standard levels as TSL 2, with one exception: the gas self-cleaning oven product class. For these ovens, the design option that provides, on average, a small level of economic benefit to consumers is included.

TSL 4 is the maximum technologically feasible efficiency level.

TABLE VI.1—TRIAL STANDARD LEVELS FOR CONVENTIONAL COOKING PRODUCTS

| Product class | TSLs | | | |
|---|---|---|---|---|
| | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
| Electric Coil Cooktops | No Standard | EF=0.769 | EF=0.769 | EF=0.769 |
| Electric Smooth Cooktops | No Standard | No Standard | No Standard | EF=0.753 |
| Gas Cooktops | No Pilot | No Pilot | No Pilot | EF=0.420 |
| Electric Standard Ovens | No Standard | EF=0.1163 | EF=0.1163 | EF=0.1209 |
| Electric Self-Cleaning Ovens | No Standard | No Standard | No Standard | EF=0.1123 |
| Gas Standard Ovens | No Pilot | No Pilot | No Pilot | EF=0.0600 |
| Gas Self-Cleaning Ovens | No Change to Existing Standard*. | No Change to Existing Standard*. | EF=0.0625 | EF=0.0632 |

* Existing Standard = No Pilot.

As discussed in section III.A, DOE has concluded that it is not technically feasible to combine cooking efficiency (or EF) into a new efficiency metric with standby power consumption in microwave ovens. For the October 2008 NOPR, DOE considered two sets of TSLs—one set comprised solely of EF levels and a second set comprised solely of standby power levels. As discussed in section II.B.3, DOE has decided to continue this rulemaking to further consider microwave oven energy conservation standards pertaining to standby power consumption. Therefore, for today's final rule, DOE is considering only EF standards for microwave ovens.

Table VI.2 shows the TSLs for the regulation of microwave oven cooking efficiency, which is expressed in terms of EF. The TSLs refer only to the EF and specify no standard regarding standby power use. TSL 4 corresponds to the maximum technologically feasible EF level.

TABLE VI.2—TRIAL STANDARD LEVELS FOR MICROWAVE OVEN ENERGY FACTOR

| | TSLs | | | |
|---|---|---|---|---|
| | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
| EF | 0.586 | 0.588 | 0.597 | 0.602 |

*B. Significance of Energy Savings*

To estimate the energy savings through 2042 attributable to potential standards, DOE compared the energy consumption of cooking products under the base case (no standards) to energy consumption of these products under each standards case (each TSL, or set of new standards, that DOE has considered). Tables VI.3 and VI.4 show DOE's NES estimates for each TSL for conventional cooking products and microwave ovens, respectively. Chapter 11 of the TSD accompanying this notice describes these estimates in more detail. In the TSD, DOE reports both undiscounted and discounted values of energy savings. Discounted energy savings represent a policy perspective in which energy savings farther in the future are less significant than energy savings closer to the present.[36]

TABLE VI.3—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CONVENTIONAL COOKING PRODUCTS

| TSL | National Energy Savings *quads* | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Electric coil cooktops | Electric smooth cooktops | Gas cooktops | Electric standard ovens | Electric self-clean ovens | Gas standard ovens | Gas self-clean ovens | Total |
| 1 | 0.00 | 0.00 | 0.10 | 0.00 | 0.00 | 0.05 | 0.00 | 0.14 |
| 2 | 0.04 | 0.00 | 0.10 | 0.05 | 0.00 | 0.05 | 0.00 | 0.23 |
| 3 | 0.04 | 0.00 | 0.10 | 0.05 | 0.00 | 0.05 | 0.09 | 0.32 |
| 4 | 0.04 | 0.02 | 0.15 | 0.07 | 0.04 | 0.09 | 0.10 | 0.50 |

TABLE VI.4—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MICROWAVE OVENS (ENERGY FACTOR)

| TSL | National Energy Savings *quads* |
|---|---|
| 1 | 0.18 |
| 2 | 0.19 |
| 3 | 0.23 |
| 4 | 0.25 |

*C. Economic Justification*

1. Economic Impact on Consumers

a. Life-Cycle Costs and Payback Period

Consumers affected by new or amended standards usually experience higher purchase prices and lower operating costs. Generally, these impacts are best captured by changes in life-cycle costs and payback period. Therefore, DOE calculated the LCC and PBP for the standard levels considered in this rulemaking. DOE's LCC and PBP analyses provided key outputs for each TSL, which are reported by product in Tables VI.5 through VI.12. In each table, the first three outputs are average LCC and its components (the average installed price and the average operating cost). The next four outputs are the average LCC savings along with the proportions of purchases of cooking products under three different scenarios in which purchasing a product that complies with the TSL would create (1) a net life-cycle cost, (2) no impact, or (3) a net life-cycle savings for the purchaser.

The last two outputs are the median and average PBP for the consumer purchasing a design that complies with the TSL. The PBP is the number of years it would take for the purchaser to recover, as a result of energy savings, the increased costs of higher efficiency products based on the operating cost savings from the first year of ownership. DOE based its complete PBP analysis for cooking products on energy consumption under conditions of actual use of each type of product by purchasers. However, as required by EPCA (42 U.S.C. 6295(o)(2)(B)(iii)), DOE based the rebuttable presumption PBP test on consumption as determined under conditions prescribed by the DOE test procedure. While DOE examined the rebuttable presumption criterion (see TSD chapter 8), it considered whether the standard levels considered for today's rule are economically justified through a more detailed analysis of the economic impacts of these levels pursuant to section 325(o)(2)(B)(i) of EPCA. (42 U.S.C. 6295(o)(2)(B)(i))

Tables VI.5, VI.6, and VI.7 show the LCC and PBP results for cooktops. To illustrate the role of the base-case forecast in the case of gas cooktops (Table VI.7), TSL 1 shows an average LCC savings of $15. The average savings are relatively low because 93.5 percent of the households in the base case already purchase a gas cooktop at the TSL 1 level, and thus have zero savings due to the standard. In this example, the base case includes a significant number of households that would not be affected by a standard set at TSL 1. DOE determined the median and average values of the PBPs shown below by excluding the households not affected by the standard.

[36] Consistent with Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), DOE follows OMB guidance regarding methodologies and procedures for regulatory impact analysis that affect more than one agency. In reporting energy and environmental benefits from energy conservation standards, DOE will report both discounted and undiscounted (*i.e.*, zero discount rate) values.

TABLE VI.5—ELECTRIC COIL COOKTOPS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.737 | $272 | $183 | $455 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 | 0.737 | 272 | 183 | 455 | No change from baseline | | | | | |
| 2, 3, 4 | 0.769 | 276 | 175 | 451 | $4 | 27.1% | 0.0% | 72.9% | 7.2 | 18.0 |

TABLE VI.6—ELECTRIC SMOOTH COOKTOPS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.742 | $309 | $183 | $492 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1, 2, 3 | 0.742 | 309 | 183 | 492 | No change from baseline | | | | | |
| 4 | 0.753 | 550 | 180 | 730 | −$238 | 100.0% | 0.0% | 0.0% | 1,498 | 3,736 |

TABLE VI.7—GAS COOKTOPS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.106 | $310 | $561 | $871 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1, 2, 3 | 0.399 | 332 | 240 | 572 | $15 | 0.1% | 93.5% | 6.4% | 4.3 | 3.3 |
| 4 | 0.420 | 361 | 234 | 595 | −8 | 93.5% | 0.0% | 6.5% | 73 | 258 |

Tables VI.8 through VI.11 show the LCC and PBP results for ovens (other than microwave ovens). For gas standard ovens, the base case includes a significant number of households that would not be affected by a standard at TSLs 1 through 3. DOE determined the median and average values of the PBPs shown below by excluding the percentage of households not affected by the standard. The large difference in the average and median values for TSL 4 for all ovens is due to households with excessively long PBPs in the distribution of results. The LCC analysis for TSL 4 yielded a few results with PBPs of thousands of years, leading to an average PBP that is very long. In these cases, the median PBP is a more representative value to gauge the length of the PBP.

TABLE VI.8—ELECTRIC STANDARD OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.1066 | $414 | $231 | $645 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 | 0.1066 | 414 | 231 | 645 | No change from baseline | | | | | |
| 2, 3 | 0.1163 | 421 | 213 | 634 | $11 | 42.7% | 0.0% | 57.3% | 8.0 | 309 |
| 4 | 0.1209 | 489 | 206 | 695 | −59 | 94.4% | 0.0% | 5.6% | 61 | 2,325 |

TABLE VI.9—ELECTRIC SELF-CLEANING OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.1099 | $485 | $243 | $728 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1, 2, 3 | 0.1099 | 485 | 243 | 728 | No change from baseline | | | | | |

TABLE VI.9—ELECTRIC SELF-CLEANING OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS—Continued

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| 4 | 0.1123 | 548 | 239 | 787 | −$143 | 78.5% | 0.0% | 21.5% | 236 | 1256 |

TABLE VI.10—GAS STANDARD OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.0298 | $430 | $406 | $837 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1, 2, 3 | 0.0583 | 464 | 266 | 730 | $9 | 5.1% | 82.3% | 12.6% | 9.0 | 7.0 |
| 4 | 0.0600 | 507 | 484 | 991 | −81 | 93.2% | 0.0% | 6.8% | 25 | 368 |

TABLE VI.11—GAS SELF-CLEANING OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.0540 | $550 | $614 | $1,164 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1, 2 | 0.0540 | 550 | 614 | 1,164 | No change from baseline | | | | | |
| 3 | 0.0625 | 566 | 595 | 1,161 | $3 | 56.1% | 0.0% | 43.9% | 11 | 391 |
| 4 | 0.0632 | 574 | 593 | 1,168 | −4 | 65.0% | 0.0% | 35.0% | 16 | 461 |

Table VI.12 shows the LCC and PBP results for microwave ovens. Results are presented for TSLs pertaining to EF. Because DOE estimated that the entire market is at the baseline level, the average LCC savings reported for each of the four TSLs are equal to the average LCC of the TSL minus the average LCC of the baseline.

TABLE VI.12—MICROWAVE OVENS: LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR EF

| TSL | EF | Life-cycle cost | | | Life-cycle cost savings | | | | Payback period years | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Average installed price | Average operating cost | Average LCC | Average savings | Households with | | | Median | Average |
| | | | | | | Net cost | No impact | Net benefit | | |
| Baseline | 0.557 | $220 | $124 | $344 | ..... | ..... | ..... | ..... | ..... | ..... |
| 1 | 0.586 | 232 | 119 | 351 | −$7 | 90.6% | 0.0% | 9.4% | 30 | 76 |
| 2 | 0.588 | 246 | 119 | 364 | −21 | 97.6% | 0.0% | 2.4% | 58 | 147 |
| 3 | 0.597 | 267 | 117 | 384 | −40 | 99.2% | 0.0% | 0.8% | 83 | 210 |
| 4 | 0.602 | 294 | 116 | 410 | −66 | 99.8% | 0.0% | 0.2% | 117 | 296 |

b. Consumer Subgroup Analysis

DOE estimated consumer subgroup impacts by determining the LCC impacts of the TSLs on low-income and senior-only households. DOE found that the LCC impacts on these subgroups and the payback periods are similar to the LCC impacts and payback periods on the full sample of residential consumers. Thus, the proposed standards would have an impact on low-income and senior-only households that would be similar to the impact on the general population of residential consumers. Chapter 12 of the TSD accompanying this notice presents the detailed results of that analysis.

2. Economic Impact on Manufacturers

DOE determined the economic impacts on manufacturers of the TSLs considered for today's rule, as described in the October 2008 NOPR. 73 FR 62034, 62075–81, 62091–62104, 62128–30 (Oct. 17, 2008). The results of these economic analyses are summarized below. For a more complete description of the anticipated economic impacts on manufacturers, see chapter 13 of the TSD accompanying this notice.

a. Industry Cash-Flow Analysis Results

Using two different markup scenarios—a preservation of gross margin [37] (percentage) scenario and a preservation of gross margin (in absolute dollars) scenario—DOE estimated the impact of potential new standards for conventional cooking products and for the cooking efficiency of microwave ovens on the INPV of the industries that manufacture these products. 73 FR 62034, 62077–78, 62092–99 (Oct. 17, 2008).

[37] ''Gross margin'' is defined as ''revenues minus cost of goods sold.'' On a unit basis, gross margin is selling price minus manufacturer production cost. In the GRIMs, markups determine the gross margin because various markups are applied to the manufacturer production costs to reach manufacturer selling price.

Under the preservation of gross margin scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels. As production cost increases with efficiency, this scenario implies that the absolute dollar markup will increase. In their interviews, all manufacturers stated that it is optimistic to assume that they would be able to maintain the same gross margin percentage markup as their production costs increase in response to an energy conservation standard. Therefore, DOE believes that this scenario represents a high bound to industry profitability under an energy conservation standard. In the ''preservation of gross margin (absolute dollars)'' scenario, gross margin is defined as ''revenues less cost of goods sold.'' The implicit assumption behind this markup scenario is that the industry will lower its markups in response to the standards to maintain only its gross margin (in absolute dollars).

The impact of new standards on INPV consists of the difference between the INPV in the base case and the INPV in the standards case. INPV is the primary metric used in the MIA and it represents one measure of the fair value of an industry in today's dollars. For each industry affected by today's rule, DOE calculated INPV by summing all of the net cash flows, discounted at the industry's cost of capital or discount rate.

For each type of product under consideration in this rulemaking, Tables VI.13 through VI.22 show the changes in INPV under both markup scenarios that DOE estimates would result from the TSLs considered for this final rule. The tables also present the product conversion costs and capital conversion costs that the industry would incur at each TSL. Product conversion costs include engineering, prototyping, testing, and marketing expenses incurred by a manufacturer as it prepares to come into compliance with a standard. Capital investments are the one-time outlays for equipment and buildings required for the industry to comply (*i.e.*, capital conversion costs).

TABLE VI.13—MANUFACTURER IMPACT ANALYSIS FOR ELECTRIC COOKTOPS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 359 | 359 | 357 | 357 | 437 |
| Change in INPV | 2006$ millions | | 0 | (2) | (2) | 78 |
| | % | | 0 | −0.55 | −0.55 | 21.76 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 0 | 9.6 | 9.6 | 21.8 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 0 | 0 | 0 | 73.1 |
| Total Investment Required .. | 2006$ millions | | 0 | 9.6 | 9.6 | 94.9 |

Numbers in parentheses indicate negative values.

TABLE VI.14—MANUFACTURER IMPACT ANALYSIS FOR ELECTRIC COOKTOPS UNDER THE PRESERVATION OF GROSS MARGIN ABSOLUTE DOLLARS MARKUP SCENARIO

[Preservation of gross margin absolute dollars markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 359 | 359 | 348 | 348 | (26) |
| Change in INPV | 2006$ millions | | 0 | (11) | (11) | (385) |
| | % | | 0 | −3.18 | −3.18 | −107.19 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 0 | 9.6 | 9.6 | 21.8 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 0 | 0 | 0 | 73.1 |
| Total Investment Required .. | 2006$ millions | | 0 | 9.6 | 9.6 | 94.9 |

Numbers in parentheses indicate negative values.

TABLE VI.15—MANUFACTURER IMPACT ANALYSIS FOR GAS COOKTOPS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 288 | 283 | 283 | 283 | 316 |
| Change in INPV | 2006$ millions | | (5) | (5) | (5) | 28 |
| | % | | −1.73 | −1.73 | −1.73 | 9.88 |

TABLE VI.15—MANUFACTURER IMPACT ANALYSIS FOR GAS COOKTOPS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO—Continued

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 9.4 | 9.4 | 9.4 | 20.8 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 2.2 | 2.2 | 2.2 | 3.3 |
| Total Investment Required .. | 2006$ millions | | 11.5 | 11.5 | 11.5 | 24.1 |

Numbers in parentheses indicate negative values.

TABLE VI.16—MANUFACTURER IMPACT ANALYSIS FOR GAS COOKTOPS UNDER THE PRESERVATION OF GROSS MARGIN ABSOLUTE DOLLARS MARKUP SCENARIO

[Preservation of gross margin absolute dollars markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 288 | 276 | 276 | 276 | 146 |
| Change in INPV | 2006$ millions | | (12) | (12) | (12) | (99) |
| | % | | −4.11 | −4.11 | −4.11 | −34.45 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 9.4 | 9.4 | 9.4 | 20.8 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 2.2 | 2.2 | 2.2 | 3.3 |
| Total Investment Required .. | 2006$ millions | | 11.5 | 11.5 | 11.5 | 24.1 |

Numbers in parentheses indicate negative values.

TABLE VI.17—MANUFACTURER IMPACT ANALYSIS FOR ELECTRIC OVENS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 797 | 797 | 789 | 789 | 788 |
| Change in INPV | 2006$ millions | | 0 | (8) | (8) | (9) |
| | % | | 0 | −0.98 | −0.98 | −1.17 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 0 | 20.8 | 20.8 | 67.6 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 0 | 0.8 | 0.8 | 179.8 |
| Total Investment Required .. | 2006$ millions | | 0 | 21.6 | 21.6 | 247.5 |

Numbers in parentheses indicate negative values.

TABLE VI.18—MANUFACTURER IMPACT ANALYSIS FOR ELECTRIC OVENS UNDER THE PRESERVATION OF GROSS MARGIN ABSOLUTE DOLLARS MARKUP SCENARIO

[Preservation of gross margin absolute dollars markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 797 | 797 | 778 | 778 | 326 |
| Change in INPV | 2006$ millions | | 0 | (19) | (19) | (471) |
| | % | | 0.00 | −2.43 | −2.43 | −59.07 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 0.0 | 20.8 | 20.8 | 67.6 |

TABLE VI.18—MANUFACTURER IMPACT ANALYSIS FOR ELECTRIC OVENS UNDER THE PRESERVATION OF GROSS MARGIN ABSOLUTE DOLLARS MARKUP SCENARIO—Continued

[Preservation of gross margin absolute dollars markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 0.0 | 0.8 | 0.8 | 179.8 |
| Total Investment Required | 2006$ millions | | 0.0 | 21.6 | 21.6 | 247.5 |

Numbers in parentheses indicate negative values.

TABLE VI.19—MANUFACTURER IMPACT ANALYSIS FOR GAS OVENS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 469 | 461 | 461 | 462 | 422 |
| Change in INPV | 2006$ millions | | (7) | (7) | (6) | (46) |
| | % | | −1.56 | −1.56 | −1.36 | −9.91 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 9.4 | 9.4 | 18.7 | 100.3 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 1.8 | 1.8 | 7.6 | 72.0 |
| Total Investment Required | 2006$ millions | | 11.1 | 11.1 | 26.4 | 172.3 |

Numbers in parentheses indicate negative values.

TABLE VI.20—MANUFACTURER IMPACT ANALYSIS FOR GAS OVENS UNDER THE PRESERVATION OF GROSS MARGIN ABSOLUTE DOLLARS MARKUP SCENARIO

[Preservation of gross margin absolute dollars markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | 4 |
| INPV | 2006$ millions | 469 | 459 | 459 | 428 | 287 |
| Change in INPV | 2006$ millions | | (10) | (10) | (41) | (182) |
| | % | | −2.10 | −2.10 | −8.68 | −38.74 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 9.4 | 9.4 | 18.7 | 100.3 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 1.8 | 1.8 | 7.6 | 72.0 |
| Total Investment Required | 2006$ millions | | 11.1 | 11.1 | 26.4 | 172.3 |

Numbers in parentheses indicate negative values.

TABLE VI.21—MANUFACTURER IMPACT ANALYSIS FOR MICROWAVE OVENS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO (ENERGY FACTOR)

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1a | 2a | 3a | 4a |
| INPV | 2006$ millions | 1,456 | 1,501 | 1,575 | 1,695 | 1,726 |
| Change in INPV | 2006$ millions | | 45 | 118 | 238 | 270 |
| | % | | 3.06 | 8.11 | 16.37 | 18.53 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions | | 60.0 | 75.0 | 90.0 | 225.0 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions | | 0.0 | 0.0 | 0.0 | 75.0 |

TABLE VI.21—MANUFACTURER IMPACT ANALYSIS FOR MICROWAVE OVENS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO (ENERGY FACTOR)—Continued

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1a | 2a | 3a | 4a |
| Total Investment Required .. | 2006$ millions ..... | ..... | 60.0 | 75.0 | 90.0 | 300.0 |

Numbers in parentheses indicate negative values.

TABLE VI.22—MANUFACTURER IMPACT ANALYSIS FOR MICROWAVE OVENS UNDER THE PRESERVATION OF GROSS MARGIN ABSOLUTE DOLLARS MARKUP SCENARIO (ENERGY FACTOR)

[Preservation of gross margin percentage markup scenario]

| | Units | Base case | TSL | | | |
|---|---|---|---|---|---|---|
| | | | 1a | 2a | 3a | 4a |
| INPV ..... | 2006$ millions ..... | 1,456 | 1,256 | 1,068 | 778 | 285 |
| Change in INPV ..... | 2006$ millions ..... | ..... | (200) | (388) | (679) | (1,171) |
| | % ..... | ..... | −13.75 | −26.64 | −46.60 | −80.42 |
| Amended Energy Conservation Standards Product Conversion Expenses. | 2006$ millions ..... | ..... | 60.0 | 75.0 | 90.0 | 225.0 |
| Amended Energy Conservation Standards Capital Investments. | 2006$ millions ..... | ..... | 0.0 | 0.0 | 0.0 | 75.0 |
| Total Investment Required .. | 2006$ millions ..... | ..... | 60.0 | 75.0 | 90.0 | 300.0 |

Numbers in parentheses indicate negative values.

As noted above, the October 2008 NOPR provides a detailed discussion of the estimated impact of new standards for cooking products on INPV. 73 FR 62034, 62091–99 (Oct. 17, 2008).

b. Impacts on Manufacturer Employment

As discussed in the October 2008 NOPR, DOE expects that employment by manufacturers would increase under all of the TSLs considered for today's rule, although this does not take into account any relocation of domestic jobs to countries with lower labor costs that might be influenced by the level of investment required by new standards. 73 FR 62034, 62100–03 (Oct. 17, 2008). For today's final rule, DOE estimates that the increase in the number of production employees in 2012 due to standards (depending on the TSL) could be 7 to 577 for conventional cooking product manufacturers and 16 to 97 for microwave oven manufacturers. Further support for these conclusions regarding direct employment impacts is provided in chapter 13 of the TSD. Indirect employment impacts from standards, consisting of the jobs created in or eliminated from the national economy other than in the manufacturing sector being regulated, are discussed in section IV.G.

c. Impacts on Manufacturers That Are Small Businesses

As discussed in section IV.F and in the October 2008 NOPR, DOE identified two small manufacturers of residential, conventional cooking products. Both manufacture gas-fired ovens, ranges, and cooktops with standing pilot lights, and these products comprise 25 percent or more of their production. 73 FR 62034, 62076, 62095, 62103 (Oct. 17, 2008). Impacts of today's standards on these two small businesses are discussed in section VII.B of this notice.

As explained in the October 2008 NOPR, there are no small businesses that manufacture microwave ovens. 73 FR 62034, 62130 (Oct. 17, 2008).

d. Cumulative Regulatory Burden

The October 2008 NOPR notes that one aspect of DOE's assessment of manufacturer burden is the cumulative impact of multiple DOE standards and other regulatory actions that affect manufacture of the same covered products and other equipment produced by the same manufacturers or their parent companies. 73 FR 62034, 62104 (Oct. 17, 2008). In addition to DOE's energy conservation regulations for cooking products, DOE identified other regulations that manufacturers face for cooking and other products and equipment they manufacture within 3 years before and 3 years after the anticipated effective date of the amended DOE regulations. *Id.* The most significant of these additional regulations include Federal standby power requirements, several additional Federal and State energy conservation standards, the Restriction of Hazardous Substance Directive (RoHS), State-by-State restrictions on mercury (which affect gas cooking appliances), and international energy conservation standards and test procedures. *Id.* As noted in the October 2008 NOPR, the last three of these requirements do not affect the standards DOE considered for today's final rule. Most manufacturers DOE interviewed stated that they already comply with the RoHS directive, and most gas cooking appliance manufacturers have already eliminated mercury switches or have plans to do so. In addition, although manufacturers may incur a substantial cost if there are overlapping testing and certification requirements in other markets besides the United States, DOE only accounts for domestic compliance costs in its calculation of product conversion expenses for products covered in this rulemaking. *Id.*

EISA 2007 directs DOE to publish final rules to modify its test procedures to measure and account for standby mode and off mode energy consumption for various products (including kitchen ranges and ovens and microwave ovens) by statutorily prescribed dates. 42 U.S.C. 6295(gg)(2)(B). In addition, EISA

2007 provides that any final rule prescribing amended or new energy conservation standards adopted after July 1, 2010 must account for standby mode and off mode energy use. 42 U.S.C 6295(gg)(3)(A). DOE has determined that some manufacturers of cooking products also produce other residential appliances that will be subject to EISA 2007 regulations on standby and off mode power. In interviews that DOE conducted for the October 2008 NOPR, manufacturers stated that these requirements will impose a heavy burden on their testing facilities going forward. In addition, manufacturers expressed a concern that EISA 2007's standby power requirements could create many overlapping regulatory compliance costs in the future.

In the analyses conducted for the October 2008 NOPR, DOE also identified numerous Federal and State energy conservation standards regulations that could affect cooking product manufacturers that produce other residential and commercial equipment. (See chapter 13 of the NOPR TSD.) Additional investments necessary to meet these potential standards could have significant impacts on manufacturers of the covered products.

Chapter 13 of the TSD accompanying this notice addresses in greater detail the issue of cumulative regulatory burden.

3. Net Present Value of Consumer Impacts and National Employment Impacts

The NPV analysis estimates the cumulative NPV to the Nation of total consumer costs and savings that would result from particular standard levels. Tables VI.23 and VI.24 provide an overview of the NPV results for each TSL considered for conventional cooking products and microwave ovens, respectively, using both a 7-percent and a 3-percent real discount rate. See chapter 11 of the TSD accompanying this notice for more detailed NPV results.

TABLE VI.23—CUMULATIVE NET PRESENT VALUE FOR CONVENTIONAL COOKING PRODUCTS
[Impacts for units sold from 2012 to 2042]

| TSL | NPV billion 2006$ | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Electric coil cooktops | | Electric smooth cooktops | | Gas cooktops | | Electric standard ovens | | Electric self-clean ovens | | Gas standard ovens | | Gas self-clean ovens | | Total | |
| | Discount rate | | Discount rate | | Discount rate | | Discount rate | | Discount rate | | Discount rate | | Discount rate | | Discount rate | |
| | 7% | 3% | 7% | 3% | 7% | 3% | 7% | 3% | 7% | 3% | 7% | 3% | 7% | 3% | 7% | 3% |
| 1 | 0.00 | 0.00 | 0.00 | 0.00 | 0.22 | 0.56 | 0.00 | 0.00 | 0.00 | 0.00 | 0.03 | 0.14 | 0.00 | 0.00 | 0.25 | 0.71 |
| 2 | 0.09 | 0.30 | 0.00 | 0.00 | 0.22 | 0.56 | 0.13 | 0.43 | 0.00 | 0.00 | 0.03 | 0.14 | 0.00 | 0.00 | 0.48 | 1.43 |
| 3 | 0.09 | 0.30 | 0.00 | 0.00 | 0.22 | 0.56 | 0.13 | 0.43 | 0.00 | 0.00 | 0.03 | 0.14 | 0.01 | 0.25 | 0.49 | 1.68 |
| 4 | 0.09 | 0.30 | −7.30 | −13.95 | −0.69 | −1.01 | −0.78 | −1.26 | −2.77 | −5.18 | −0.89 | −1.72 | −0.11 | 0.03 | −12.46 | −22.79 |

TABLE VI.24—CUMULATIVE NET PRESENT VALUE FOR MICROWAVE OVEN ENERGY FACTOR
[Impacts for units sold from 2012 to 2042]

| TSL | NPV billion 2006$ | |
|---|---|---|
| | 7% Discount rate | 3% Discount rate |
| 1 | −1.23 | −2.06 |
| 2 | −3.33 | −6.05 |
| 3 | −6.32 | −11.68 |
| 4 | −10.05 | −18.70 |

DOE also estimated the national employment impacts that would result from each TSL. As Table VI.25 shows, DOE estimates that any net monetary savings from standards would be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity would affect the demand for labor. DOE estimated that net indirect employment impacts from energy conservation standards for cooking products would be positive (see Table VI.25), but very small relative to total national employment. This increase would likely be sufficient to fully offset any adverse impacts on employment that might occur in the cooking products industries. For details on the employment impact analysis methods and results, see chapter 15 of the TSD accompanying this notice.

TABLE VI.25—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT, THOUSANDS OF JOBS IN 2042

| Thousands of jobs in 2042 | | | |
|---|---|---|---|
| Trial standard level | Conventional cooking products | Trial standard level | Microwave oven EF |
| 1 | 0.26 | 1 | 2.06 |
| 2 | 0.94 | 2 | 2.07 |
| 3 | 1.03 | 3 | 2.44 |
| 4 | 1.21 | 4 | 2.47 |

4. Impact on Utility or Performance of Products

As indicated in sections III.E.1.d and V.B.4 of the October 2008 NOPR, DOE has concluded that the TSLs it has considered for cooking products would not lessen the utility or performance of any cooking products. 73 FR 62034, 62046–47, 62107 (Oct. 17, 2008).

5. Impact of Any Lessening of Competition

As discussed in the October 2008 NOPR (73 FR 62034, 62047, 62107 (Oct. 17, 2008)) and in section III.D.1.e of this preamble, DOE considers any lessening of competition likely to result from proposed energy conservation standards. The Attorney General also provides DOE with a written determination of the impact, if any, of any such lessening of competition. DOE considers the Attorney General's determination when preparing the final rule for the standards rulemaking and publishes this written determination as an attachment to the final rule.

The DOJ concluded that the cooking products standards contained in the proposed rule could substantially limit consumer choice by eliminating the cooking appliance that most closely meets the needs of certain consumers, including those with religious and cultural practices that prohibit the use of line electricity, those without access to line electricity, and those whose kitchens do not have appropriate electrical outlets. The DOJ recommended that to maintain competition, DOE should consider setting a ''no standard'' standard for residential gas cooking products with constant burning pilots to address the potential for certain customers to be stranded without an economical product alternative. (DOJ, No. 53 at p. 2)

As discussed in section VI.D.2 above, DOE conducted additional research on battery-powered ignition systems for residential gas cooking products. DOE was able to identify a gas range for sale in the United Kingdom (U.K.) that incorporates a battery-powered ignition system that appears to meet the functional safety requirements of ANSI Z21.1 (*i.e.*, that the oven main burner is lit by an intermittent gas pilot that is in turn lit by a battery-powered spark igniter). This ignition system meets the requirements of ANSI Z21.1 in that it does not require the user to push a separate ''light'' button at the same time as the control knob is turned to allow pilot gas flow. However, this ignition system does not include a safety device to shut off the main gas valve in the event that no flame is detected, which is required by the ANSI standard.

However, DOE found that there are gas cooking products with battery-powered ignition for RV applications available in the United States that meet similar ANSI safety standards for RV gas cooking products and as found in ANSI safety standards for residential gas cooking products. Thus, DOE believes, that a battery-powered ignition system designed for an RV gas range could be integrated into a residential gas range that could meet ANSI Z21.1 requirements.

DOE next investigated the possibility that battery-powered ignition systems used in other indoor residential appliances in the United States could meet the requirements of ANSI Z21.1, even though they are not currently being incorporated in gas cooking products. DOE identified several such appliances, including a remote-controlled gas fireplace and instantaneous gas water heaters. For these products, the battery-powered ignition systems are required to meet the same or equivalent component-level ANSI safety standards as are required for automatic ignition systems in gas cooking products. DOE contacted several manufacturers of gas cooking products, fireplaces, and instantaneous water heaters, as well as ignition component suppliers, to investigate the technological feasibility of integrating these existing battery-powered ignition systems into gas cooking products that would meet ANSI Z21.1. None of these manufacturers could identify insurmountable technological impediments to the development of such a product. Based on its research, DOE determined that the primary barrier to commercialization of battery-powered ignition systems in gas cooking products has been lack of market demand and economic justification rather than technological feasibility. Therefore, DOE concludes that a gas range incorporating one of these ignition systems could meet ANSI Z21.1. In addition, DOE research suggests that the market niche for gas cooking products equipped with battery-powered ignition systems, which would be created by the proposed gas cooking product standards, would likely attract entrants among ignition component suppliers. Therefore, in consideration of the above, DOE concludes that technologically feasible alternative ignition systems to standing pilots in gas cooking products exist and that consumer choice will not be limited by eliminating pilot lights of gas ranges and ovens without electrical supply cords.

6. Need of the Nation to Conserve Energy

Improving the energy efficiency of cooking products, where economically justified, would likely improve the security of the Nation's energy system by reducing overall demand for energy, thus reducing the Nation's reliance on foreign sources of energy. Reduced demand would also likely improve the reliability of the electricity system, particularly during peak-load periods.

Energy savings from higher standards for cooking products would also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production, and with household and building use of fossil fuels at sites where gas cooking products are used. Table VI.26 provides DOE's estimate of cumulative $CO_2$, $NO_X$, and Hg emissions reductions that would result from the TSLs considered in this rulemaking. The expected energy savings from new standards for cooking products may also reduce the cost of maintaining nationwide emissions standards and constraints. In the environmental assessment (chapter 16 of the TSD accompanying this notice), DOE reports estimated annual changes in $CO_2$, $NO_X$, and Hg emissions attributable to each TSL.

TABLE VI.26—CUMULATIVE $CO_2$, AND OTHER EMISSIONS REDUCTIONS (CUMULATIVE REDUCTIONS FOR PRODUCTS SOLD FROM 2012 TO 2042)

**Emissions Reductions for Conventional Cooking Products**

| | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| $CO_2$ (Mt) | 13.74 | 15.46 | 23.39 | 34.96 |
| $NO_X$ (kt) | 6.71 | 6.88 | 10.82 | 16.07 |
| Hg (t) | 0 – 0.15 | 0 – 0.19 | 0 – 0.28 | 0 – 0.41 |

**Emissions Reductions for Microwave Ovens Energy Factor**

| | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| $CO_2$ (Mt) | 22.88 | 33.46 | 53.89 | 74.67 |
| $NO_X$ (kt) | 2.55 | 3.75 | 6.06 | 8.42 |
| Hg (t) | 0 – 0.46 | 0 – 0.68 | 0 – 1.10 | 0 – 1.52 |

Mt = million metric tons.
kt = thousand metric tons.
t = metric tons.

As discussed in section IV.I of this final rule, DOE does not report $SO_2$ emissions reductions from power plants because reductions from an energy conservation standard would not affect the overall level of $SO_2$ emissions in the United States due to the emissions caps for $SO_2$.

For the October 2008 NOPR, DOE's NEMS–BT modeling assumed that $NO_X$ would be subject to the CAIR, issued by the U.S. Environmental Protection Agency on March 10, 2005. 70 FR 25162 (May 12, 2005). On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *North Carolina* v. *Environmental Protection Agency*, in which the court vacated CAIR. 531 F.3d 896 (DC Cir. 2008). Because the NEMS–BT model could no longer be used to estimate $NO_X$ emissions, DOE estimated a range of $NO_X$ reductions that would result from the trial standard levels being considered for the October 2008 NOPR based on low and high $NO_X$ emission rates. DOE multiplied these emission rates by the reduction in electricity generation due to the potential amended energy conservation standards considered to calculate the expected reduction in $NO_X$ emissions. The October 2008 NOPR describes these calculations in greater detail. 73 FR 62034, 62108–09 (Oct. 17, 2008).

On December 23, 2008, after the publication of the October 2008 NOPR, the D.C. Circuit decided to allow CAIR to remain in effect until it is replaced by a rule consistent with the court's earlier opinion. *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008) (remand of vacatur). As a result, for today's final rule, DOE was able to use the NEMS–BT model to estimate the $NO_X$ emissions reductions that standards would cause. CAIR permanently caps emissions of $NO_X$ for 28 eastern States and D.C. This means that any new or amended energy conservation standards for cooking products would be unlikely to result in any reduction of $NO_X$ emissions in those States covered by the CAIR caps. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits, if large enough. However, DOE determined that in the present case, such standards would not produce an environmentally-related economic impact in the form of lower prices for emissions allowance credits, because the estimated reduction in $NO_X$ emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for $NO_X$ under the CAIR. In contrast, new or amended energy conservation standards would reduce $NO_X$ emissions in those 22 States that are not affected by CAIR. As a result, the NEMS–BT does forecast $NO_X$ emission reductions from energy sources in those 22 States from the cooking product standards considered in today's final rule.

As noted in section IV.I, DOE was able to estimate the changes in Hg emissions associated with an energy conservation standard as follows. DOE notes that the NEMS–BT model, used as an integral part of today's rulemaking, does not estimate Hg emission reductions due to new energy conservation standards, as it assumed that Hg emissions would be subject to EPA's CAMR.[38] CAMR would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010. As with $SO_2$ and $NO_X$, DOE assumed that under such a system, energy conservation standards would have resulted in no physical effect on these emissions, but might have resulted in an environmentally related economic benefit in the form of a lower price for emissions allowance credits if those credits were large enough. DOE estimated that the change in the Hg emissions from energy conservation standards would not be large enough to influence allowance prices under CAMR.

On February 8, 2008, the D.C. Circuit issued its decision in *New Jersey* v. *Environmental Protection Agency*[39] to vacate CAMR. In light of this development and because the NEMS–BT model could not be used to directly calculate Hg emission reductions, DOE used the Hg emission rates discussed above to calculate emissions reductions.

Therefore, rather than using the NEMS–BT model, DOE established a range of Hg rates to estimate the Hg emissions that could be reduced through standards. DOE's low estimate assumed that future standards would displace electrical generation only from natural gas-fired power plants, thereby resulting in an effective emission rate of zero. (Under this scenario, coal-fired power plant generation would remain unaffected.) The low-end emission rate is zero because natural gas-fired power plants have virtually zero Hg emissions associated with their operation.

DOE's high estimate, which assumed that standards would displace only coal-fired power plants, was based on a nationwide mercury emission rate from *AEO2008*. (Under this scenario, gas-fired power plant generation would remain unaffected.) Because power plant emission rates are a function of local regulation, scrubbers, and the mercury content of coal, it is extremely difficult to identify a precise high-end emission rate. Therefore, the most reasonable estimate is based on the assumption that all displaced coal generation would have been emitting at the average emission rate for coal generation as specified by *AEO2008*. As noted previously, because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the tons of mercury emitted per TWh of coal-generated electricity. Based on the emission rate for 2006, DOE derived a high-end emission rate of 0.0255 tons per TWh. To estimate the reduction in mercury emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity due to the standards considered in the utility impact analysis. These changes in Hg emissions are extremely small, ranging from 0.03 to 0.27 percent of the national base-case emissions forecast by NEMS–BT, depending on the TSL.

In the October 2008 NOPR, DOE considered accounting for a monetary benefit of $CO_2$ emission reductions associated with standards. To put the potential monetary benefits from reduced $CO_2$ emissions into a form that would likely be most useful to decisionmakers and interested parties, DOE used the same methods it used to calculate the net present value of consumer cost savings. DOE converted the estimated yearly reductions in $CO_2$ emissions into monetary values, which were then discounted over the life of the affected equipment to the present using both 3-percent and 7-percent discount rates.

In the October 2008 NOPR, DOE proposed to use the range $0 to $20 per ton for the year 2007 in 2007$. 73 FR 62034, 62110 (Oct. 17, 2008). These estimates were based on a previous analysis that used a range of no benefit to an average benefit value reported by the Intergovernmental Panel on Climate Change (IPCC).[40] DOE derived the IPCC

[38] 70 FR 28606 (May 18, 2005).

[39] 517 F.3d 574 (D.C. Cir. 2008).

[40] During the preparation of its most recent review of the state of climate science, the IPCC identified various estimates of the present value of reducing $CO_2$ emissions by 1 ton over the life that these emissions would remain in the atmosphere. The estimates reviewed by the IPCC spanned a range of values. Absent a consensus on any single estimate of the monetary value of $CO_2$ emissions, DOE used the estimates identified by the study cited in ''Summary for Policymakers,'' prepared by Working Group II of the IPCC's ''Fourth Assessment Report,'' to estimate the potential monetary value of

estimate used as the upper bound value from an estimate of the mean value of worldwide impacts due to climate change and not just the effects likely to occur within the United States. This previous analysis assumed that the appropriate value should be restricted to a representation of those costs and benefits likely to be experienced in the United States. DOE explained in the October 2008 NOPR that it expects such domestic values would be lower than comparable global values; however, there currently are no consensus estimates for the U.S. benefits likely to result from $CO_2$ emission reductions. Because U.S.-specific estimates were unavailable and DOE did not receive any additional information that would help narrow the proposed range of domestic benefits, DOE used the global mean value as an upper bound U.S. value.

The Joint Comment asserted that DOE should use the EIA analysis of the Climate Security Act from April 2008, including future price escalation, to estimate the cost of avoiding $CO_2$ emissions. The core scenario of this analysis specifies a $17 price per ton of $CO_2$ with an annual 7.4 percent yearly increase forecast. (Joint Comment, No. 44 at p. 12) Whirlpool stated that the regulation of $CO_2$ should be restricted to the regulation of power plants and, therefore, does not support an attempt to value those emissions as part of this rulemaking. (Whirlpool, No. 50 at p. 8)

The Department of Energy, together with other Federal agencies, is currently reviewing various methodologies for estimating the monetary value of reductions in $CO_2$ and other greenhouse gas emissions. This review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues, such as whether the appropriate values should represent domestic U.S. or global benefits (and costs). Given the complexity of the many issues involved, this review is ongoing. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this rulemaking the values and analyses previously conducted.

Given the uncertainty surrounding estimates of the social cost of carbon, DOE previously concluded that relying on any single estimate may be inadvisable because that estimate will depend on many assumptions. Working Group II's contribution to the ''Fourth Assessment Report'' of the IPCC notes the following:

> The large ranges of SCC are due in the large part to differences in assumptions regarding climate sensitivity, response lags, the treatment of risk and equity, economic and non-economic impacts, the inclusion of potentially catastrophic losses, and discount rates.[41]

Because of this uncertainty, DOE previously used the SCC value from Tol (2005), which was presented in the IPCC's ''Fourth Assessment Report'' and provided a comprehensive meta-analysis of estimates for the value of SCC. Tol released an update of his 2005 meta-analysis in September 2007 that reported an increase in the mean estimate of SCC from $43 to $71 per ton carbon. Although the Tol study was updated in 2007, the IPCC has not adopted the update. As a result, DOE previously decided to continue to rely on the study cited by the IPCC. DOE notes that the conclusions of Tol in 2007 are similar to the conclusions of Tol in 2005. In 2007, Tol continues to indicate that there is no consensus regarding the monetary value of reducing $CO_2$ emissions by 1 ton. The broad range of values in both Tol studies are the result of significant differences in the methodologies used in the studies Tol summarized. According to Tol, all of the studies have shortcomings, largely because the subject is inherently complex and uncertain and requires broad multidisciplinary knowledge. Thus, it was not certain that the values reported in Tol in 2007 are more accurate or representative than the values reported in Tol in 2005.

For today's final rule, DOE continues to use the range of values proposed in the October 2008 NOPR, which was based on the values presented in Tol (2005) as proposed. Additionally, DOE applied an annual growth rate of 2.4 percent to the value of SCC, as suggested by the IPCC Working Group II (2007, p. 822). This growth rate is based on estimated increases in damage from future emissions that published studies have reported. Because the values in Tol (2005) were presented in 1995 dollars, DOE calculated more current values, assigning a range for SCC of $0 to $20 (2007$) per ton of $CO_2$ emissions.

The upper bound of the range DOE used is based on Tol (2005), which reviewed 103 estimates of SCC from 28 published studies. Tol concluded that when only peer-reviewed studies published in recognized journals are considered, ''climate change impacts may be very uncertain but [it] is unlikely that the marginal damage costs of carbon dioxide emissions exceed $50 per ton carbon [comparable to a 2007 value of $20 per ton carbon dioxide when expressed in 2007 U.S. dollars with a 2.4 percent growth rate].''

In setting a lower bound, DOE previous analysis agreed with the IPCC Working Group II (2007) report that ''significant warming across the globe and the locations of significant observed changes in many systems consistent with warming is very unlikely to be due solely to natural variability of temperatures or natural variability of the systems'' (p. 9), and thus tentatively concluded that a global value of zero for the SCC cannot be justified. However, DOE previously concluded that it is reasonable to allow for the possibility that the SCC for the United States may be quite low. In fact, some of the studies examined by Tol (2005) reported negative values for the SCC. As stated in the October 2008 NOPR, DOE assumed that it was most appropriate to use U.S. benefit values rather than world benefit values in its analysis, and U.S. values will likely be lower than the global values. As indicated above, DOE, together with other Federal agencies, is now reviewing whether this previous analysis should be modified. However, it is very unlikely that possible changes in this methodology would affect the conclusions reached in this rulemaking.

Table VI.27 presents the resulting estimates of the potential range of net present value benefits associated with reducing $CO_2$ emissions.

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$CO_2$ reductions likely to result from standards considered in this rulemaking. According to IPCC, the mean social cost of carbon (SCC) reported in studies published in peer-reviewed journals was $43 per ton of carbon. This translates into about $12 per ton of $CO_2$. The literature review (Tol 2005) from which this mean was derived did not report the year in which these dollars were denominated. However, DOE understands this estimate was for the year 1995 denominated in 1995$. Updating that estimate to 2007$ yields a SCC for the year 1995 of $15 per ton of $CO_2$.

[41] ''Climate Change 2007—Impacts, Adaptation and Vulnerability.'' Contribution of Working Group II to the ''Fourth Assessment Report'' of the IPCC, 17. Available at *http://www.ipcc.ch/ipccreports/ar4-wg2.htm* (last accessed Aug. 7, 2008).

TABLE VI.27—ESTIMATES OF VALUE OF $CO_2$ EMISSIONS REDUCTIONS UNDER TRIAL STANDARD LEVELS AT SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

| Conventional cooking product TSL | Estimated cumulative $CO_2$ emission reductions *Mt* | Value at 7% discount rate *million 2007$* | Value at 3% discount rate *million 2007$* |
|---|---|---|---|
| 1 | 13.74 | $0 to $109 | $0 to $241. |
| 2 | 15.46 | $0 to $122 | $0 to $270. |
| 3 | 23.39 | $0 to $182 | $0 to $408. |
| 4 | 34.96 | $0 to $269 | $0 to $610. |
| **Microwave oven energy factor TSL** | **Estimated cumulative $CO_2$ emission reductions *Mt*** | **Value at 7% discount rate *million 2007$*** | **Value at 3% discount rate *million 2007$*** |
| 1 | 22.88 | $0 to $192 | $0 to $404. |
| 2 | 33.46 | $0 to $277 | $0 to $589. |
| 3 | 53.89 | $0 to $443 | $0 to $948. |
| 4 | 74.67 | $0 to $612 | $0 to $1313. |

DOE also investigated the potential monetary benefit of reduced $SO_2$, $NO_X$, and Hg emissions from the TSLs it considered. As previously stated, DOE's initial analysis assumed the presence of nationwide emission caps on $SO_2$ and Hg, and caps on $NO_X$ emissions in the 28 States covered by CAIR. In the presence of these caps, DOE concluded that no physical reductions in power sector emissions would occur, but that the standards could put downward pressure on the prices of emissions allowances in cap-and-trade markets. Estimating this effect is very difficult because of factors such as credit banking, which can change the trajectory of prices. DOE has concluded that the effect from energy conservation standards on $SO_2$ allowance prices is likely to be negligible based on runs of the NEMS–BT model. See chapter 16 of the TSD accompanying this notice for further details.

Because the courts have decided to allow the CAIR rule to remain in effect, projected annual $NO_X$ allowances from NEMS–BT are relevant. As noted above, standards would not produce an economic impact in the form of lower prices for emissions allowance credits in the 28 eastern States and DC covered by the CAIR cap. New or amended energy conservation standards would reduce $NO_X$ emissions in those 22 States that are not affected by CAIR. For the area of the United States not covered by CAIR, DOE estimated the monetized value of $NO_X$ emissions reductions resulting from each of the TSLs considered for today's final rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values for $NO_X$ emissions, ranging from $370 per ton to $3,800 per ton of $NO_X$ from stationary sources, measured in 2001$ (equivalent to a range of $421 per ton to $4,326 per ton in 2006$).[42]

For Hg emissions reductions, DOE estimated the national monetized values resulting from the TSLs considered for today's rule based on environmental damage estimates from the literature. DOE conducted research for today's final rule and determined that the impact of mercury emissions from power plants on humans is considered highly uncertain. However, DOE identified two estimates of the environmental damage of mercury based on two estimates of the adverse impact of childhood exposure to methyl mercury on IQ for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high-end estimate is based on an estimate of the current aggregate cost of the loss of IQ in American children that results from exposure to mercury of U.S. power plant origin ($1.3 billion per year in year 2000$), which works out to $31.7 million per ton emitted per year (2006$).[43] The low-end estimate is $0.66 million per ton emitted (in 2004$) or $0.71 million per ton in 2006$. DOE derived this estimate from a published evaluation of mercury control using different methods and assumptions from the first study, but also based on the present value of the lifetime earnings of children exposed.[44] Table VI.28 and Table VI.29 present the resulting estimates of the potential range of present value benefits associated with reduced national $NO_X$ and Hg emissions from the TSLs DOE considered.

TABLE VI.28—ESTIMATES OF MONETARY VALUE OF REDUCTIONS OF HG AND $NO_X$ BY TRIAL STANDARD LEVEL AT A SEVEN-PERCENT DISCOUNT RATE

| Conventional cooking product TSL | Cumulative $NO_X$ emission reductions *kt* | Value of $NO_X$ emission reductions *million 2006$* | Estimated cumulative Hg emission reductions *t* | Value of estimated Hg emission reductions *million 2006$* |
|---|---|---|---|---|
| 1 | 6.71 | 0.7 to 7.3 | 0 to 0.15 | 0 to 1.3. |
| 2 | 6.88 | 0.7 to 7.5 | 0 to 0.19 | 0 to 1.6. |
| 3 | 10.82 | 1.1 to 11.5 | 0 to 0.28 | 0 to 2.2. |

[42] Office of Management and Budget Office of Information and Regulatory Affairs, ''2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,'' Washington, DC (2006).

[43] Trasande, L., *et al.,* ''Applying Cost Analyses to Drive Policy that Protects Children,'' 1076 Ann. N.Y. Acad. Sci. 911 (2006).

[44] Ted Gayer and Robert Hahn, ''Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions,'' Regulatory Analysis 05–01, AEI-Brookings Joint Center for Regulatory Studies, Washington, DC (2004). A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study.

TABLE VI.28—ESTIMATES OF MONETARY VALUE OF REDUCTIONS OF Hg AND $NO_X$ BY TRIAL STANDARD LEVEL AT A SEVEN-PERCENT DISCOUNT RATE—Continued

| Conventional cooking product TSL | Cumulative $NO_X$ emission reductions *kt* | Value of $NO_X$ emission reductions *million 2006$* | Estimated cumulative Hg emission reductions *t* | Value of estimated Hg emission reductions *million 2006$* |
|---|---|---|---|---|
| 4 | 16.07 | 1.6 to 16.8 | 0 to 0.41 | 0 to 3.3. |
| **Microwave oven energy factor TSL** | **Cumulative $NO_X$ emission reductions *kt*** | **Value of $NO_X$ emission reductions *million 2006$*** | **Estimated cumulative Hg emission reductions *t*** | **Value of estimated Hg emission reductions *million 2006$*** |
| 1 | 2.55 | 0.3 to 3.2 | 0 to 0.46 | 0 to 3.7 |
| 2 | 3.75 | 0.4 to 4.6 | 0 to 0.68 | 0 to 5.4 |
| 3 | 6.06 | 0.7 to 7.3 | 0 to 1.10 | 0 to 8.6 |
| 4 | 8.42 | 1.0 to 10.2 | 0 to 1.52 | 0 to 11.8 |

TABLE VI.29—ESTIMATES OF MONETARY VALUE OF REDUCTIONS OF Hg AND $NO_X$ BY TRIAL STANDARD LEVEL AT A THREE-PERCENT DISCOUNT RATE

| Conventional cooking product TSL | Cumulative $NO_X$ emission reductions *kt* | Value of $NO_X$ emission reductions *million 2006$* | Estimated cumulative Hg emission reductions *t* | Value of estimated Hg emission reductions *million 2006$* |
|---|---|---|---|---|
| 1 | 6.71 | 1.5 to 15.4 | 0 to 0.15 | 0 to 2.6. |
| 2 | 6.88 | 1.5 to 15.7 | 0 to 0.19 | 0 to 3.3. |
| 3 | 10.82 | 2.4 to 24.5 | 0 to 0.28 | 0 to 4.6. |
| 4 | 16.07 | 3.5 to 36.1 | 0 to 0.41 | 0 to 6.9. |
| **Microwave oven energy factor TSL** | **Cumulative $NO_X$ emission reductions *kt*** | **Value of $NO_X$ emission reductions *million 2006$*** | **Estimated cumulative Hg emission reductions *t*** | **Value of estimated Hg emission reductions *million 2006$*** |
| 1 | 2.55 | 0.6 to 6.1 | 0 to 0.46 | 0 to 7.8. |
| 2 | 3.75 | 0.9 to 8.9 | 0 to 0.68 | 0 to 11.3. |
| 3 | 6.06 | 1.4 to 14.4 | 0 to 1.10 | 0 to 18.2. |
| 4 | 8.42 | 1.9 to 19.9 | 0 to 1.52 | 0 to 25.2. |

*D. Conclusion*

1. Overview

EPCA contains criteria for prescribing new or amended energy conservation standards. It provides that any such standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, to the greatest extent practicable, considering the seven factors previously discussed in section II.A of today's final rule. (42 U.S.C. 6295(o)(2)(B)(i)) A determination of whether a standard level is economically justified is not made based on any one of these factors in isolation. The Secretary must weigh each of these seven factors in total in determining whether a standard is economically justified. Further, the Secretary may not establish a new or amended standard if such standard would not result in ''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B))

In deciding whether to adopt amended or new energy conservation standards for conventional cooking products, and for the cooking efficiency of microwave ovens, respectively, DOE started by examining the maximum technologically feasible levels to determine whether those levels were economically justified. Upon finding that the maximum technologically feasible levels were not economically justified, DOE analyzed the next lower TSL to determine whether that level was economically justified. DOE follows this procedure until it identifies a TSL that is economically justified, or determines that no TSL is economically justified.

Below are tables that summarize the results of DOE's quantitative analysis for each of the TSLs it considered for today's final rule. These tables present the results for each TSL, and will aid the reader in the discussion of costs and benefits of each TSL. The range of values for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

In addition to the quantitative results, DOE also considered other burdens and benefits that affect economic justification. In the case of conventional cooking products, DOE considered the burden on the industry associated with complying with performance standards. Currently, conventional cooking products are not rated for efficiency because DOE has promulgated only prescriptive standards for gas cooking products. Therefore, any proposed performance standards would require the industry to test, rate, and label these cooking products, a significant burden that the industry currently does not bear. In the specific case of gas cooking products, DOE also considered the safety and commercial availability of battery-powered ignition devices as a replacement for standing pilot ignition systems.

2. Conventional Cooking Products

Table VI.30 summarizes the results of DOE's quantitative analysis for the TSLs it considered for conventional cooking products for today's final rule. The impacts at each TSL are measured relative to a no-standards base case.

TABLE VI.30—SUMMARY OF QUANTITATIVE RESULTS FOR CONVENTIONAL COOKING PRODUCTS *

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| Primary Energy Saved (quads): | | | | |
| 0% Discount Rate | 0.14 | 0.23 | 0.32 | 0.50 |
| 7% Discount Rate | 0.04 | 0.06 | 0.08 | 0.12 |
| 3% Discount Rate | 0.08 | 0.12 | 0.17 | 0.26 |
| Generation Capacity Reduction (GW) ** | 0.062 | 0.081 | 0.120 | 0.184 |
| NPV of Consumer Impacts (2006$ billion): | | | | |
| 7% Discount Rate | 0.254 | 0.475 | 0.486 | (12.456) |
| 3% Discount Rate | 0.706 | 1.432 | 1.684 | (22.787) |
| Industry Impacts: | | | | |
| Gas Cooktops | | | | |
| Industry NPV (2006$ million) | (5)–(12) | (5)–(12) | (5)–(12) | 28–(99) |
| Industry NPV (% Change) | (2)–(4) | (2)–(4) | (2)–(4) | 10–(34) |
| Electric Cooktops | | | | |
| Industry NPV (2006$ million) | 0 | (2)–(11) | (2)–(11) | 78–(385) |
| Industry NPV (% Change) | 0 | (1)–(3) | (1)–(3) | 22–(107) |
| Gas Ovens | | | | |
| Industry NPV (2006$ million) | (7)–(10) | (7)–(10) | (6)–(41) | (46)–(182) |
| Industry NPV (% Change) | (2) | (2) | (1)–(9) | (10)–(39) |
| Electric Ovens | | | | |
| Industry NPV (2006$ million) | 0 | (8)–(19) | (8)–(19) | (9)–(471) |
| Industry NPV (% Change) | 0 | (1)–(2) | (1)–(2) | (1)–(59) |
| Cumulative Emissions Reductions: † | | | | |
| $CO_2$ (Mt) | 13.74 | 15.46 | 23.39 | 34.96 |
| $NO_X$ (kt) | 6.71 | 6.88 | 10.82 | 16.07 |
| Hg (t) | 0–0.15 | 0–0.19 | 0–0.28 | 0–0.41 |
| Value of Emissions Reductions: | | | | |
| $CO_2$ (2007$ million) | | | | |
| 7% Discount Rate | 0–109 | 0–122 | 0–182 | 0–269 |
| 3% Discount Rate | 0–241 | 0–270 | 0–408 | 0–610 |
| $NO_X$ (2006$ million) | | | | |
| 7% Discount Rate | 0.7–7.3 | 0.7–7.5 | 1.1–11.5 | 1.6–16.8 |
| 3% Discount Rate | 1.5–15.4 | 1.5–15.7 | 2.4–24.5 | 3.5–36.1 |
| Hg (2006$ million) | | | | |
| 7% Discount Rate | 0–1.3 | 0–1.6 | 0–2.2 | 0–3.3 |
| 3% Discount Rate | 0–2.6 | 0–3.3 | 0–4.6 | 0–6.9 |
| Mean LCC Savings * (2006$): | | | | |
| Gas Cooktop/Conventional Burners | 15 | 15 | 15 | (8) |
| Electric Cooktop/Low or High Wattage Open (Coil) Elements | ..... | 4 | 4 | 4 |
| Electric Cooktop/Smooth Elements | ..... | ..... | ..... | (238) |
| Gas Oven/Standard Oven with or w/o a Catalytic Line | 9 | 9 | 9 | (81) |
| Gas Oven/Self-Clean Oven | ..... | ..... | 3 | (4) |
| Electric Oven/Standard Oven with or w/o a Catalytic Line | ..... | 11 | 11 | (50) |
| Electric Oven/Self-Clean Oven | ..... | ..... | ..... | (143) |
| Median PBP (years): | | | | |
| Gas Cooktop/Conventional Burners | 4.3 | 4.3 | 4.3 | 73.0 |
| Electric Cooktop/Low or High Wattage Open (Coil) Elements | ..... | 7.2 | 7.2 | 7.2 |
| Electric Cooktop/Smooth Elements | ..... | ..... | ..... | 1,498 |
| Gas Oven/Standard Oven with or w/o a Catalytic Line | 9.0 | 9.0 | 9.0 | 25.3 |
| Gas Oven/Self-Clean Oven | ..... | ..... | 11.0 | 15.6 |
| Electric Oven/Standard Oven with or w/o a Catalytic Line | ..... | 8.0 | 8.0 | 60.7 |
| Electric Oven/Self-Clean Oven | ..... | ..... | ..... | 236 |
| LCC Consumer Impacts: | | | | |
| Gas Cooktop/Conventional Burners | | | | |
| Net Cost (%) | 0.1 | 0.1 | 0.1 | 93.5 |
| No Impact (%) | 93.5 | 93.5 | 93.5 | 0.0 |
| Net Benefit (%) | 6.4 | 6.4 | 6.4 | 6.5 |
| Electric Cooktop/Low or High Wattage Open (Coil) Elements | | | | |
| Net Cost (%) | ..... | 27.1 | 27.1 | 27.1 |
| No Impact (%) | ..... | 0.0 | 0.0 | 0.0 |
| Net Benefit (%) | ..... | 72.9 | 72.9 | *72.9 |
| Electric Cooktop/Smooth Elements | | | | |
| Net Cost (%) | ..... | ..... | ..... | 100.0 |
| No Impact (%) | ..... | ..... | ..... | 0.0 |
| Net Benefit (%) | ..... | ..... | ..... | 0.0 |
| Gas Oven/Standard Oven with or w/o a Catalytic Line | | | | |
| Net Cost (%) | 5.1 | 5.1 | 5.1 | 93.2 |
| No Impact (%) | 82.3 | 82.3 | 82.3 | 0.0 |
| Net Benefit (%) | 12.6 | 12.6 | 12.6 | 6.8 |
| Gas Oven/Self-Clean Oven | | | | |
| Net Cost (%) | ..... | ..... | 56.1 | 65.0 |
| No Impact (%) | ..... | ..... | 0.0 | 0.0 |
| Net Benefit (%) | ..... | ..... | 43.9 | 35.0 |

TABLE VI.30—SUMMARY OF QUANTITATIVE RESULTS FOR CONVENTIONAL COOKING PRODUCTS *—Continued

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| Electric Oven/Standard Oven with or w/o a Catalytic Line | | | | |
| Net Cost (%) | ..... | 42.7 | 42.7 | 94.4 |
| No Impact (%) | ..... | 0.0 | 0.0 | 0.0 |
| Net Benefit (%) | ..... | 57.3 | 57.3 | 5.6 |
| Electric Oven/Self-Clean Oven | | | | |
| Net Cost (%) | ..... | ..... | ..... | 78.5 |
| No Impact (%) | ..... | ..... | ..... | 0.0 |
| Net Benefit (%) | ..... | ..... | ..... | 21.5 |

* Parentheses indicate negative values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Changes in installed generation capacity in gigawatts (GW) by 2042 based on the *AEO2008* Reference Case.
† $CO_2$ emissions impacts include physical reductions at power plants and at households. $NO_X$ emissions impacts include physical reductions at power plants and at households.

First, DOE considered TSL 4, the max-tech level. TSL 4 would likely save 0.50 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.12 quads. TSL 4 would result in a decrease of $12.5 billion in the NPV of consumer benefits, using a discount rate of 7 percent. The emissions reductions at TSL 4 are 34.96 Mt of $CO_2$, 16.07 kt of $NO_X$, and 0 t to 0.41 t of Hg with a corresponding value of $0 to $269 million for $CO_2$, $1.6 to $16.8 million for $NO_X$, and $0 to $3.3 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 is estimated to decrease by 0.184 gigawatts (GW) under TSL 4.

At TSL 4, DOE projects that the average conventional cooking product consumer would experience an increase in LCC, with the exception of consumers of electric coil cooktops. In the case of the latter, the average consumer would save $4 in LCC. With the exception of electric coil cooktop consumers, DOE estimated LCC increases at TSL 4 for at least 65 percent of consumers in the Nation that purchase conventional cooking products. The median payback period of each product class, with the exception of electric coil cooktops and gas self-cleaning ovens, is projected to be substantially longer than the mean lifetime of the product.

DOE estimates that the technology needed to attain TSL 4 for electric cooktops (improved contact conductance) may not provide energy savings under field conditions. 73 FR 62034, 62115 (Oct. 17, 2008). Measured efficiency gains from improved contact conductance have been obtained under DOE test procedure conditions using an aluminum test block. To ensure consistent and repeatable testing, the aluminum test block is used to establish cooktop efficiency by measuring the increased heat content of the block during a test measurement. Because the test block is much flatter than actual cooking vessels and, thus, allows for a higher degree of thermal contact between the block and coil element, the efficiency gains with an actual cooking vessel likely may not be as large or may not even be achievable. Therefore, DOE doubts that electric cooktop consumers may actually realize savings with products at TSL 4.

DOE estimated the projected change in INPV at TSL 4 for each of the following four general categories of conventional cooking products: Gas cooktops, electric cooktops, gas ovens, and electric ovens. The projected change in INPV ranges from an increase of $28 million to a decrease of $99 million for gas cooktops, an increase of $78 million to a decrease of $385 million for electric cooktops, a decrease of $46 million to a decrease of $182 million for gas ovens, and a decrease of $9 million to a decrease of $471 million for electric ovens. At TSL 4, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of negative impacts is reached as DOE expects, TSL 4 could result in a net loss of 34 percent in INPV to gas cooktop manufacturers, a net loss of 107 percent in INPV to electric cooktop manufacturers, a net loss of 39 percent to gas oven manufacturers, and a net loss of 59 percent to electric oven manufacturers.

After carefully considering the analysis and weighing the benefits and burdens of TSL 4, DOE concludes that the potential benefits of energy savings and emissions reductions are outweighed by the potential multi-million dollar negative net economic cost to the Nation's consumers, the economic burden on many individual consumers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers. In addition, because conventional cooking products are not rated for efficiency, TSL 4 would significantly impact the industry in terms of the added cost of testing, rating, and labeling these products. Consequently, DOE concludes that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which yielded primary energy savings estimated at 0.32 quads of energy through 2042, an amount which DOE considers to be significant. Discounted at 7 percent, the energy savings through 2042 would be 0.08 quads. TSL 3 would result in an increase of $486 million in the NPV of consumer benefit, using a discount rate of 7 percent. The emissions reductions are projected to be 23.39 Mt of $CO_2$, 10.82 kt of $NO_X$, and 0 t to 0.28 t of Hg with a corresponding value of $0 to $182 million for $CO_2$, $1.1 to $11.5 million for $NO_X$, and $0 to $2.2 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 under TSL 3 is estimated to decrease by 0.120 GW.

For electric smooth cooktops and electric self-cleaning ovens, TSL 3 does not alter the current absence of a standard because none of the candidate standard levels for these products provide economic savings to consumers. However, average gas and electric coil cooktop consumers would save $15 and $4 in LCC, respectively, at TSL 3. Average consumers of gas standard ovens, gas self-cleaning ovens, and electric standard ovens would realize LCC savings of $9, $3, and $11, respectively, at TSL 3. The median payback period of each product class impacted by TSL 3 is projected to be shorter than the mean lifetime of the products (19 years). For example, at TSL 3 the projected payback period is 4.3 years for average consumers of gas cooktops, whereas the projected payback period is 11.0 years for average consumers of gas self-cleaning ovens.

Although TSL 3 provides LCC savings to the average consumer, DOE estimates a significant percentage of consumers of gas self-cleaning ovens and electric standard ovens would be burdened by

the standard (*i.e.*, experience increases in their LCC). DOE estimates that 56 percent of consumers of gas self-cleaning ovens and 43 percent of consumers of electric standard ovens would be burdened by TSL 3. In the case of electric standard ovens, almost 50 percent of consumers would be burdened. In the case of gas cooktops, 94 percent of consumers are not impacted by TSL 3 (they already purchase cooktops at TSL 3). Of the remaining 6 percent of gas cooktop consumers who are impacted by TSL 3, nearly all would realize LCC savings. For gas standard ovens, 82 percent consumers are not impacted by TSL 3. Of the remaining 18 percent of gas standard oven consumers who are affected by TSL 3, two-thirds realize LCC savings. In the case of electric coil cooktops, more than 70 percent of consumers have a decrease in their LCC. However, the efficiency gain achieved at TSL 3 would be achieved through the same technological change as TSL 4 (improved contact conductance). As noted for TSL 4, DOE has significant doubt that electric cooktop consumers would actually realize economic savings at TSL 3.

At TSL 3, the projected change in INPV for each of the four general categories of conventional cooking products range from a decrease of $5 million to a decrease of $12 million for gas cooktops, a decrease of $2 million to a decrease of $11 million for electric cooktops, a decrease of $6 million to a decrease of $41 million for gas ovens, and a decrease of $8 million to a decrease of $19 million for electric ovens. At TSL 3, DOE recognizes the risk of negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 3 could result in maximum net losses of up to 4 percent in INPV for gas cooktop manufacturers, 3 percent for electric cooktop manufacturers, 9 percent for gas oven manufacturers, and 2 percent for electric oven manufacturers.

Although DOE recognizes the economic benefits to the Nation's consumers that could result from TSL 3, DOE concludes that the benefits of a standard at TSL 3 would be outweighed by the economic burden on conventional cooking product consumers. The economic savings realized by average consumers are outweighed by the significant percentage of gas self-cleaning oven and electric standard oven consumers who are burdened by the standard. Considering that TSL 3 also adversely impacts manufacturers' INPV and would place a significant burden on manufacturers to comply with the standards, the benefits of energy savings and emissions reductions are not significant enough to outweigh the burdens of the standard. Consequently, DOE concludes that TSL 3 is not economically justified.

DOE next considered TSL 2. TSL 2 would save 0.23 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.06 quads. DOE projects TSL 2 to yield an NPV of consumer benefit of $475 million, using a discount rate of 7 percent. The estimated emissions reductions are 15.46 Mt of $CO_2$, 6.88 kt to of $NO_X$, and 0 t to 0.19 t of Hg with a corresponding value of $0 to $122 million for $CO_2$, $0.7 to $7.5 million for $NO_X$, and $0 to $1.6 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 under TSL 2 would likely decrease by 0.081 GW.

The candidate standard levels for each of the product classes that comprise TSL 2 are the same as TSL 3 except for gas self-cleaning ovens. DOE did not alter the current standard and establish an efficiency level for gas self-cleaning ovens for TSL 2 because, as described for TSL 3, efficiency levels that go beyond the baseline level do not yield LCC savings to a majority of gas self-cleaning consumers. For all other product classes, the impacts to consumers at TSL 3 are identical to those at TSL 2.

At TSL 2, the projected change in INPV for each of the four general categories of conventional cooking products range from a decrease of $5 million to a decrease of $12 million for gas cooktops, a decrease of $2 million to a decrease of $11 million for electric cooktops, a decrease of $7 million to a decrease of $10 million for gas ovens, and a decrease of $8 million to a decrease of $19 million for electric ovens. At TSL 2, DOE recognizes the risk of negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 2 could result in a net loss of 4 percent in INPV to gas cooktop manufacturers, a net loss of 3 percent in INPV to electric cooktop manufacturers, a net loss of 2 percent to gas oven manufacturers, and a net loss of 2 percent to electric oven manufacturers.

Although DOE recognizes the economic benefits to the Nation's consumers that could result from TSL 2, DOE concludes that the benefits of a standard at TSL 2 would be outweighed by the economic burden that would be placed upon conventional cooking product consumers. The potential economic savings realized by average consumers are outweighed by the significant percentage of electric standard oven consumers who are burdened by the standard and by the significant risk that consumers of electric coil cooktops would not realize the savings projected for that product. TSL 2 would also adversely impact manufacturer INPV and would place a significant burden on manufacturers to comply with the standards. Consequently, the benefits of energy savings and emissions impacts of TSL 2 are not significant enough to outweigh the burdens that would be created by the standard. Consequently, DOE concludes that TSL 2 is not economically justified.

DOE next considered TSL 1. With TSL 1, only amended energy conservation standards consisting of prescriptive requirements to eliminate standing pilots for gas cooktops and gas standard ovens would be promulgated. DOE projects that TSL 1 would save 0.14 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.04 quads. DOE projects TSL 1 to yield an NPV of consumer benefit of $254 million, using a discount rate of 7 percent. The estimated emissions reductions are 13.74 Mt of $CO_2$, 6.71 kt of $NO_X$, and 0 t to 0.15 t of Hg with a corresponding value of $0 to $109 million for $CO_2$, $0.7 to $7.3 million for $NO_X$, and $0 to $1.3 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 under TSL 1 would decrease by 0.062 GW.

At TSL 1, average gas cooktop and gas standard oven consumers would save $13 and $6 in LCC, respectively. DOE estimates that 94 percent of gas cooktop consumers and 82 percent of gas standard oven consumers would not be affected at TSL 1. Of the remaining impacted consumers, DOE estimates that nearly all gas cooktop consumers and over 70 percent of gas standard oven consumers would realize LCC savings due to the elimination of standing pilots. The median payback period for the impacted consumers is 4.3 years for gas cooktop consumers and 9.0 years for gas standard oven consumers.

At TSL 1, the projected change in INPV ranges from a decrease of $5 million to a decrease of $12 million for gas cooktops and a decrease of $7 million to a decrease of $10 million for gas ovens. At TSL 1, DOE recognizes the risk of negative impacts if

manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 1 could result in a net loss of 4 percent in INPV to gas cooktop manufacturers and a net loss of 2 percent to gas oven manufacturers. Although DOE estimates that TSL 1 would lead to some net loss in INPV to gas cooktop and gas oven manufacturers, because TSL 1 is comprised of prescriptive requirements, the industry would not face the additional costs associated with complying with performance requirements. Currently, only prescriptive standards for conventional cooking products are in effect requiring that gas cooking products with an electrical supply cord not be equipped with a constant burning pilot. As a result, conventional cooking product manufacturers are not currently subject to the costs of testing the rated performance of their products to label and comply with performance-based energy conservation standards. Because TSL 1 effectively extends the existing prescriptive requirement to all gas cooking products regardless of whether the products have an electrical supply cord, DOE avoids burdening manufacturers with testing, labeling, and compliance costs that they currently do not bear.

As stated in the October 2008 NOPR, DOE recognizes that there is a small subgroup of consumers that use gas cooking products but are without household electricity. 73 FR 62034, 62116 (Oct. 17, 2008). Under TSL 1, these consumers are likely to be affected because they would be required to use an electrical source for cooking products to operate the ignition system. For the October 2008 NOPR, DOE market research demonstrated that battery-powered electronic ignition systems have been implemented in other products, such as instantaneous gas water heaters, barbeques, and furnaces, and the use of such products is not expressly prohibited by applicable safety standards for gas cooking products. *Id.* Therefore, DOE tentatively concluded for the October 2008 NOPR that households that use gas for cooking and are without electricity would likely have technological options that would enable them to continue to use gas cooking if standing pilot ignition systems are eliminated. *Id.*

However, as detailed in section III.C.2 of today's final rule, numerous interested parties objected to the above conclusion, and in particular, commenters argued that there are currently no commercially available gas cooking products with battery-powered electronic ignition systems that have been certified to applicable U.S. safety standards. In response to these comments, DOE conducted additional research on battery-powered ignition systems for residential gas cooking products, which confirmed commenters' statements regarding the absence of any gas cooking products with battery-powered electronic ignition systems currently certified to applicable U.S. safety standards. However, DOE concludes that the primary barrier to commercialization of battery-powered ignition systems in gas cooking products has been lack of market demand and economic justification rather than technological feasibility. DOE further concludes that a gas range incorporating one of these ignition systems could meet the requirements of ANSI Z21.1. In addition, DOE research suggests that the market niche for gas cooking products equipped with battery-powered ignition systems, which would be created by a standard at TSL 1, would likely attract entrants among ignition component suppliers and, therefore, that technologically feasible alternative ignition systems to standing pilots in gas cooking products for households without electricity will likely be available by the time these energy conservation standards are effective.

Although DOE recognizes the economic impact that a standard at TSL 1 would have upon a small subgroup of consumers of gas cooking products, DOE concludes that the benefits to the significant majority of the Nation's consumers that could result from TSL 1 would outweigh the economic burden that would be placed upon this subgroup. Although TSL 1 would adversely impact manufacturer INPV, DOE has concluded that it would not place a significant burden on manufacturers to comply with the standards in terms of changes to existing manufacturing processes and certification testing. Therefore, the benefits of energy savings and emissions impacts of TSL 1 are significant enough to outweigh the burdens that would be created by the standard. Consequently, DOE concludes that TSL 1 is economically justified.

In sum, after carefully considering the analysis, the comments on the October 2008 NOPR, and the benefits and burdens of each of the TSLs DOE considered, the Secretary concludes that amended standards for cooking efficiency of conventional cooking products, consisting of a prohibition of constant burning pilots for all gas kitchen ranges and ovens, will save a significant amount of energy and are technologically feasible and economically justified. In addition, the Secretary also concludes that no amended cooking efficiency standard is both technologically feasible and economically justified for residential electric kitchen ranges and ovens. Therefore, DOE is not adopting any energy conservation standards for residential electric kitchen ranges and ovens.

3. Microwave Ovens

Table VI.31 presents a summary of the quantitative results for the microwave oven TSLs pertaining to cooking efficiency. The impacts at each TSL are measured relative to a no-standards base case.

TABLE VI.31—SUMMARY OF QUANTITATIVE RESULTS FOR MICROWAVE OVEN ENERGY FACTOR

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| Primary Energy Saved (quads): | | | | |
| 0% Discount Rate | 0.18 | 0.19 | 0.23 | 0.25 |
| 7% Discount Rate | 0.05 | 0.05 | 0.07 | 0.07 |
| 3% Discount Rate | 0.10 | 0.10 | 0.13 | 0.14 |
| Generation Capacity Reduction (GW) ** | 0.137 | 0.207 | 0.340 | 0.477 |
| NPV of Consumer Impacts (2006$ billion): | | | | |
| 7% Discount Rate | (1.23) | (3.33) | (6.32) | (10.05) |
| 3% Discount Rate | (2.06) | (6.05) | (11.68) | (18.70) |
| Industry Impacts: | | | | |
| Industry NPV (2006$ million) | 45–(200) | 118–(388) | 238–(679) | 270–(1171) |
| Industry NPV (% Change) | 3–(14) | 8–(27) | 16–(47) | 19–(80) |
| Cumulative Emissions Impacts: † | | | | |

TABLE VI.31—SUMMARY OF QUANTITATIVE RESULTS FOR MICROWAVE OVEN ENERGY FACTOR—Continued

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| $CO_2$ (Mt) | 22.88 | 33.46 | 53.89 | 74.67 |
| $NO_X$ (kt) | 2.55 | 3.75 | 6.06 | 8.42 |
| Hg (t) | 0–0.46 | 0–0.68 | 0–1.10 | 0–1.52 |
| Value of Emissions Reductions: | | | | |
| $CO_2$ (2007$ million) | | | | |
| 7% Discount Rate | 0–192 | 0–277 | 0–443 | 0–612 |
| 3% Discount Rate | 0–404 | 0–589 | 0–948 | 0–1313 |
| $NO_X$ (2006$ million) | | | | |
| 7% Discount Rate | 0.3–3.2 | 0.4–4.6 | 0.7–7.3 | 1.0–10.2 |
| 3% Discount Rate | 0.6–6.1 | 0.9–8.9 | 1.4–14.4 | 1.9–19.9 |
| Hg (2006$ million) | | | | |
| 7% Discount Rate | 0–3.7 | 0–5.4 | 0–8.6 | 0–11.8 |
| 3% Discount Rate | 0–7.8 | 0–11.3 | 0–18.2 | 0–25.2 |
| Mean LCC Savings* (2006$) | (7) | (21) | (40) | (66) |
| Median PBP (years) | 29.9 | 58.1 | 82.8 | 116.6 |
| LCC Consumer Impacts: | | | | |
| Net Cost (%) | 90.6 | 97.6 | 99.2 | 99.8 |
| No Impact (%) | 0.0 | 0.0 | 0.0 | 0.0 |
| Net Benefit (%) | 9.4 | 2.4 | 0.8 | 0.2 |

* Parentheses indicate negative values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Changes in installed generation capacity by 2042 based on the *AEO2008* Reference Case.
† $CO_2$ emissions impacts include physical reductions at power plants. $NO_X$ emissions impacts include physical reductions at power plants.

First, DOE considered TSL 4, the max-tech level for microwave oven cooking efficiency. TSL 4 would save 0.25 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.07 quads. TSL 4 would result in a decrease of $10.05 billion in the NPV of consumer impacts, using a discount rate of 7 percent. The emissions reductions at TSL 4 are 74.67 Mt of $CO_2$, 8.42 kt of $NO_X$, and 0 t to 1.52 t of Hg with a corresponding value of $0 to $612 million for $CO_2$, $1.0 to $10.2 million for $NO_X$, and $0 to $11.8 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 is estimated to decrease compared to the reference case by 0.477 GW.

At TSL 4, DOE projects that the average microwave oven consumer would experience an increase in LCC. The median payback period for the average consumer is projected to be substantially longer than the mean lifetime of the product.

DOE estimated the projected change in INPV ranges at TSL 4 from an increase of $270 million to a decrease of $1.171 billion. At TSL 4, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of negative impacts is reached, as DOE expects, TSL 4 could result in a net loss of 80 percent in INPV to microwave oven manufacturers.

After carefully considering the analysis and weighing the benefits and burdens of TSL 4, DOE concludes that the benefits of energy savings and emissions reductions would be outweighed by a large decrease in the NPV of consumer impacts, the economic burden on many consumers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers. Consequently, DOE concludes that TSL 4 is not economically justified.

DOE next considered TSL 3. Primary energy savings are estimated at 0.23 quads of energy through 2042, which DOE considers significant. Discounted at 7 percent, the energy savings through 2042 would be 0.07 quads. TSL 3 would result in a decrease of $6.32 billion in the NPV of consumer benefit, using a discount rate of 7 percent. The emissions reductions are projected to be 53.89 Mt of $CO_2$, 6.06 kt of $NO_X$, and 0 t to 1.10 t of Hg with a corresponding value of $0 to $443 million for $CO_2$, $0.7 to $7.3 million for $NO_X$, and $0 to $8.6 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 under TSL 3 is estimated to decrease by 0.340 GW.

At TSL 3, DOE projects that the average microwave oven consumer would experience an increase in LCC. The median payback period of the average consumer is projected to be substantially longer than the mean lifetime of the product.

DOE estimated the projected change in INPV ranges from an increase of $238 million to a decrease of $679 million. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of negative impacts is reached, as DOE expects, TSL 3 could result in a net loss of 47 percent in INPV to microwave oven manufacturers.

After carefully considering the analysis and weighing the benefits and burdens of TSL 3, DOE concludes that the benefits of energy savings and emissions reductions would be outweighed by the large decrease in the NPV of consumer impacts, the economic burden on many consumers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers. Consequently, DOE concludes that TSL 3 is not economically justified.

DOE next considered TSL 2. DOE projects that TSL 2 would save 0.19 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.05 quads. DOE projects TSL 2 to result in a decrease in the NPV of consumer impacts of $3.33 billion. The estimated emissions reductions are 33.46 Mt of $CO_2$, 3.75 kt of $NO_X$, and 0 t to 0.68 t of Hg with a corresponding value of $0 to $227 million for $CO_2$, $0.4 to $4.6 million for $NO_X$, and $0 to $5.4 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 under TSL 2 would likely decrease by 0.207 GW.

At TSL 2, DOE projects that the average microwave oven consumer would experience an increase in LCC. The median payback period of the average consumer is projected to be substantially longer than the mean lifetime of the product.

At TSL 2, the projected change in INPV ranges from an increase of $118 million to a decrease of $388 million. At

TSL 2, DOE recognizes the risk of negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of negative impacts is reached, as DOE expects, TSL 2 could result in a net loss of 27 percent in INPV to microwave oven manufacturers.

After carefully considering the analysis and weighing the benefits and burdens of TSL 2, DOE concludes that the benefits of energy savings and emissions reductions would be outweighed by the large decrease in the NPV of consumer impacts, the economic burden on many consumers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers. Consequently, DOE concludes that TSL 2 is not economically justified.

DOE next considered TSL 1. DOE projects that TSL 1 would save 0.18 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.05 quads. For the Nation as a whole, DOE projects TSL 1 to result in a decrease in the NPV of consumer impacts of $1.23 billion. The estimated emissions reductions are 22.88 Mt of $CO_2$, 2.55 kt of $NO_X$, and 0 t to 0.46 t of Hg with a corresponding value of $0 to $192 million for $CO_2$, $0.3 to $3.2 million for $NO_X$, and $0 to $3.7 million for Hg, using a discount rate of 7 percent. Total generating capacity in 2042 under TSL 1 would likely decrease by 0.137 GW.

At TSL 1, DOE projects that the average microwave oven consumer would experience an increase in LCC. The median payback period of the average consumer is projected to be substantially longer than the mean lifetime of the product.

At TSL 1, the projected change in INPV ranges from a decrease of $45 million to a decrease of $200 million. At TSL 1, DOE recognizes the risk of negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached, as DOE expects, TSL 1 could result in a net loss of 14 percent in INPV to microwave oven manufacturers.

After carefully considering the analysis and weighing the benefits and burdens of TSL 1, DOE concludes that the benefits of energy savings and emissions reductions would be outweighed by the large decrease in the NPV of consumer impacts, the economic burden on many consumers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers. Consequently, DOE concludes that TSL 1 is not economically justified.

In sum, after carefully considering the analysis, the comments on the October 2008 NOPR, and the benefits and burdens of each of the TSLs DOE considered, the Secretary concludes that no amended standard is both technologically feasible and economically justified for microwave oven EF. Therefore, DOE is not adopting any energy conservation standard for microwave oven EF.

## VII. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866*

Today's regulatory action has been determined 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 subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

The Executive Order requires each agency to identify in writing the specific market failure or other specific problem that it intends to address that warrants agency action, as well as to assess the significance of that problem in evaluating whether any new regulation is warranted. Executive Order 12866, section 1(b)(1).

The October 2008 NOPR evaluated the market failure that the proposed rule would address. 73 FR 62034, 62122–23 (Oct. 17, 2008). DOE's analysis for some residential gas cooking products explicitly quantifies and accounts for the percentage of consumers that already purchase more efficient equipment and takes these consumers into account when determining the national energy savings associated with various TSLs. The analysis suggests that accounting for the market value of energy savings alone (*i.e.*, excluding any possible additional ''externality'' benefits such as those noted below) would produce enough benefits to yield net benefits across a wide array of products and circumstances. In the October 2008 NOPR, DOE requested additional data (including the percentage of consumers purchasing more efficient cooking products and the extent to which consumers of all product types will continue to purchase more efficient equipment), in order to test the existence and extent of these consumer actions. 73 FR 62034, 62123 (Oct. 17, 2008). DOE received no such data from interested parties in response to the October 2008 NOPR.

DOE believes that there is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market. If this is the case, DOE would expect the energy efficiency for cooking products to be randomly distributed across key variables such as energy prices and usage levels. DOE has already identified the percentage of consumers that already purchase more efficient gas cooktops and gas standard ovens. However, DOE does not correlate the consumer's usage pattern and energy price with the efficiency of the purchased product. In the October 2008 NOPR, DOE sought data on the efficiency levels of existing cooking products by how often they are used (*e.g.*, how many times or hours the product is used) and their associated energy prices (and/or geographic regions of the country). *Id.* DOE received no such data from interested parties in response to the October 2008 NOPR. Therefore, DOE was unable to test for today's final rule the extent to which purchasers of cooking products behave as if they are unaware of the costs associated with their energy consumption.

A related issue is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services). In many instances, the party responsible for an appliance purchase may not be the one who pays the cost to operate it. For example, home builders in large-scale developments often make decisions about appliances without input from home buyers and do not offer options to upgrade those appliances. Also, apartment owners normally make decisions about appliances, but renters often pay the utility bills. If there were no transactions costs, it would be in the home builders' and apartment owners' interest to install appliances that buyers and renters would choose. For example, one would expect that a renter who knowingly faces higher utility bills from low-efficiency appliances would be willing to pay less in rent, and the apartment owner would indirectly bear the higher utility cost. However, this information is not readily available, and it may not be in the renter's interest to take the time to develop it, or, in the case of the landlord who installs a high-efficiency appliance, to convey that information to the renter.

To the extent that asymmetric information and/or high transactions costs are problems, one would expect to find certain outcomes for appliance energy efficiency. For example, all things being equal, one would not expect to see higher rents for apartments with high-efficiency appliances. Conversely, if there were symmetric information, one would expect appliances with higher energy efficiency in rental units where the rent includes utilities compared to those where the renter pays the utility bills separately. Similarly, for single-family homes, one would expect higher energy efficiency levels for replacement units than for appliances installed in new construction. Within the new construction market, one would expect to see appliances with higher energy efficiency levels in custom-built homes (where the buyer has more say in appliance choices) than in comparable homes built in large-scale developments.

DOE received no data from interested parties in response to the October 2008 NOPR on the issue of asymmetric information and/or high transactions costs. Therefore, DOE was unable to determine for today's final rule the extent to which asymmetric information and/or high transaction costs are a market failure.

In addition, this rulemaking is likely to yield certain external benefits resulting from improved energy efficiency of cooking products that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases. The TSLs which DOE evaluated resulted in $CO_2$, $NO_X$, and Hg emissions reductions. DOE also determined a range of possible monetary benefits associated with the emissions reductions. DOE considered both the emissions reductions and their possible monetary benefit in determining the economic feasibility of the TSLs.

DOE conducted an RIA and, under the Executive Order, was subject to review by the Office of Information and Regulatory Affairs (OIRA) in the OMB. DOE presented to OIRA the draft final rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. They are available for public review in the Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The RIA is contained as chapter 17 in the TSD prepared for the rulemaking. The RIA consists of (1) a statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of today's standards. In today's final rule DOE is not adopting any standards for microwave ovens. Therefore, DOE performed an RIA solely for conventional cooking products for today's final rule.

The RIA calculates the effects of feasible policy alternatives to energy conservation standards for conventional cooking products and provides a quantitative comparison of the impacts of the alternatives. DOE evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and compared it to the effectiveness of the proposed rule. DOE analyzed these alternatives using a series of regulatory scenarios as input to the NIA Spreadsheets for the two appliance products, which it modified to allow inputs for voluntary measures. For more details on how DOE modified the NIA spreadsheets to determine the impacts due to the various non-regulatory alternatives to standards, refer to chapter 17 of the TSD accompanying this notice.

As shown in Table VII.1 below, DOE identified the following major policy alternatives for achieving increased energy efficiency in conventional cooking products:

- No new regulatory action;
- Financial incentives;
  - ► Consumer rebates;
  - ► Consumer tax credits;
  - ► Manufacturer tax credits;
- Voluntary energy efficiency targets;
- Bulk government purchases;
- Early replacement; and
- The proposed approach (national performance and prescriptive standards).

TABLE VII.1—NON-REGULATORY ALTERNATIVES TO STANDARDS FOR CONVENTIONAL COOKING PRODUCTS

| Policy alternatives | Energy savings* quads | Net present value** billion $ | |
|---|---|---|---|
| | | 7% Discount rate | 3% Discount rate |
| No New Regulatory Action | 0 | 0 | 0 |
| Consumer Rebates | 0.12 | 0.21 | 0.60 |
| Consumer Tax Credits | 0.05 | 0.08 | 0.27 |
| Manufacturer Tax Credits | 0.01 | 0.02 | 0.06 |
| Early Replacement | 0.01 | 0.07 | 0.12 |
| Today's Standards at TSL 1 | 0.14 | 0.25 | 0.71 |

* Energy savings are in source quads.
** Net present value is the value in the present of a time series of costs and savings. DOE determined the net present value from 2012 to 2042 in billions of 2006 dollars.
*** Voluntary energy efficiency target and bulk government purchase alternatives are not considered because the percentage of the market at TSL 1 (today's standard) is well over the market adoption target level that each alternative strives to attain.

The net present value amounts shown in Table VII.1 refer to the NPV for consumers. The costs to the government of each policy (such as rebates or tax credits) are not included in the costs for the NPV since, on balance, consumers would be both paying for (through taxes) and receiving the benefits of the payments. The following paragraphs discuss each of the policy alternatives listed in Table VII.1. (See the TSD accompanying this notice, chapter 17.)

*No New Regulatory Action.* The case in which no regulatory action is taken with regard to conventional cooking products constitutes the ''base case'' (or ''No Action'') scenario. In this case, between 2012 and 2042, conventional cooking products are expected to use 10.3 quads of primary energy. Since this

is the base case, energy savings and NPV are zero by definition.

*Consumer Rebates.* Consumer rebates cover a portion of the incremental installed cost difference between products meeting baseline efficiency levels and those meeting higher efficiency levels, which generally result in a higher percentage of consumers purchasing more efficient models. DOE utilized market penetration curves from a study that analyzed the potential of energy efficiency in California.[45] The penetration curves are a function of benefit-cost ratio (*i.e.*, lifetime operating costs savings divided by increased total installed costs) to estimate the increased market share of more efficient products given incentives by a rebate program. Using specific rebate amounts, DOE calculated, for each of the considered products, the benefit-cost ratio of the more efficient appliance with and without the rebate to project the increased market penetration of the product due to a rebate program.

For conventional cooking products meeting the efficiency levels in TSL 1 (*i.e.*, gas cooking products without constant burning pilot lights), DOE estimated that the annual increase in consumer purchases of these products due to consumer rebates would be 7.8 percent. DOE selected the portion of the incremental costs covered by the rebate (*i.e.*, 100 percent) using data from rebate programs conducted by 88 gas utilities, electric utilities, and other State government agencies.[46] DOE estimated that the impact of this policy would be to permanently transform the market so that the increased market share seen in the first year of the program would be maintained throughout the forecast period. At the estimated participation rates, consumer rebates would be expected to provide 0.12 quads of national energy savings and an NPV of $0.21 billion (at a 7-percent discount rate).

Although DOE estimated that consumer rebates would provide national benefits for conventional cooking products, these benefits would be smaller than the benefits resulting from national performance standards at the proposed levels. Thus, DOE rejected consumer rebates as a policy alternative to national performance standards.

*Consumer Tax Credits.* Consumer tax credits cover a percentage of the incremental installed cost difference between products meeting baseline efficiency levels and those with higher efficiencies. Consumer tax credits are considered a viable non-regulatory market transformation program as evidenced by the inclusion of Federal consumer tax credits in EPACT 2005 for various residential appliances. (Section 1333 of EPACT 2005; codified at 26 U.S.C. 25C) DOE reviewed the market impact of tax credits offered by the Oregon Department of Energy (ODOE) (ODOE, No. 35 at p. 1) and Montana Department of Revenue (MDR) (MDR, No. 36 at p. 1) to estimate the effect of a national tax credit program. To help estimate the impacts from such a program, DOE also reviewed analyses prepared for the California Public Utilities Commission,[47] the Northwest Energy Efficiency Alliance,[48] and the Energy Foundation/Hewlett Foundation.[49] For each of the appliance products considered for this rulemaking, DOE estimated that the market effect of a tax credit program would gradually increase over a time period until it reached its maximum impact. Once the tax credit program attained its maximum effect, DOE assumed the impact of the policy would be to permanently transform the market at this level.

For conventional cooking products, DOE estimated that the market share of efficient products meeting TSL 1 would increase by 0.7 percent in 2012 and increase over a 6-year period to an annual maximum of 2.8 percent in 2020. At these estimated participation rates, consumer tax credits would be expected to provide 0.05 quads of national energy savings and an NPV of $0.08 billion (at a 7-percent discount rate).[50]

DOE estimated that while consumer tax credits would yield national benefits for conventional cooking products, these benefits would be much smaller than the benefits from the proposed national performance standards. Thus, DOE rejected consumer tax credits as a policy alternative to national performance standards.

*Manufacturer Tax Credits.* Manufacturer tax credits are considered a viable non-regulatory market transformation program as evidenced by the inclusion of Federal tax credits in EPACT 2005 for manufacturers of residential appliances. (Section 1334 of EPACT 2005; codified at 26 U.S.C. 45M) Similar to consumer tax credits, manufacturer tax credits would effectively result in lower product prices to consumers by an amount that covered part of the incremental price difference between products meeting baseline efficiency levels and those meeting higher efficiency levels. Because these tax credits would go to manufacturers instead of consumers, research indicates that fewer consumers would be affected by a manufacturer tax credit program than by consumer tax credits.[51] [52] Although consumers would benefit from price reductions passed through to them by the manufacturers, research demonstrates that approximately half the consumers who would benefit from a consumer tax credit program would be aware of the economic benefits of more efficient technologies included in an appliance manufacturer tax credit program. In other words, research estimates that half of the effect from a consumer tax credit program is due to publicly available information or promotions announcing the benefits of the program. This effect, referred to as the ''announcement effect,'' is not part of a manufacturer tax credit program. Therefore, DOE estimated that the effect of a manufacturer tax credit program would be only half of the maximum impact of a consumer tax credit program.

For conventional cooking products, the percentage of consumers purchasing products meeting TSL 1 would be expected to increase by 0.6 percent due to a manufacturer tax credit program.[53] DOE assumed that the impact of the manufacturer tax credit policy would be to permanently transform the market so

[45] Rufo, M. and F. Coito, *California's Secret Energy Surplus: The Potential for Energy Efficiency* (prepared for The Energy Foundation and The Hewlett Foundation by Xenergy, Inc.) (2002).

[46] Because DOE was not able to identify consumer rebate programs specific to conventional cooking products, rebate amounts for another kitchen appliance, dishwashers, were used to estimate the impact from a rebate program providing incentives for more efficient cooking products.

[47] Itron and KEMA, *2004/2005 Statewide Residential Retrofit Single-Family Energy Efficiency Rebate Evaluation* (prepared for the California Public Utilities Commission, Pacific Gas And Electric Company, San Diego Gas and Electric Company, Southern California Edison, Southern California Gas Company, CPUC–ID# 1115–04) (2007).

[48] KEMA, *Consumer Product Market Progress Evaluation Report 3* (prepared for Northwest Energy Efficiency Alliance, Report #07–174) (2007).

[49] Rufo, M., and F. Coito, *op. cit.*

[50] Because DOE was not able to identify consumer tax credit programs specific to conventional cooking products, increased market penetrations for another kitchen appliance, dishwashers, were used to estimate the impact from a tax credit program providing incentives for more efficient conventional cooking products and microwave ovens.

[51] K. Train, *Customer Decision Study: Analysis of Residential Customer Equipment Purchase Decisions* (prepared for Southern California Edison by Cambridge Systematics, Pacific Consulting Services, The Technology Applications Group, and California Survey Research Services) (1994).

[52] Lawrence Berkeley National Laboratory, End-Use Forecasting Group. *Analysis of Tax Credits for Efficient Equipment (1997).* Available at *http://enduse.lbl.gov/Projects/TaxCredits.html.* (Last accessed April 24, 2008.)

[53] DOE assumed that the manufacturer tax credit program would affect only consumers of gas cooking products, who did not need electric outlets installed; therefore the increased percentage impact includes only those consumers.

that the increased market share seen in the first year of the program would be maintained throughout the forecast period.

At the above estimated participation rates, manufacturer tax credits would provide 0.01 quads of national energy savings and an NPV of $0.02 billion (at a 7-percent discount rate) for conventional cooking products.

DOE estimated that while manufacturer tax credits would yield national benefits for conventional cooking products, these benefits would be much smaller than the benefits from national performance standards. Thus, DOE rejected manufacturer tax credits as a policy alternative to the proposed national performance standards.

*Voluntary Energy Efficiency Targets.* DOE estimates the impact of voluntary energy efficiency targets by reviewing the historical and projected market transformation performance of past and current ENERGY STAR programs. However, DOE did not analyze the potential impacts of voluntary energy efficiency targets for conventional cooking products because over 85 percent of the gas range market already meets TSL 1. The ENERGY STAR program typically targets products where a maximum of approximately 25 percent of the existing market meets the target efficiency level.[54] Since the market for gas ranges are well above the 25-percent threshold, DOE did not consider this approach for conventional cooking products.

*Early Replacement.* The early replacement policy alternative envisions a program to replace old, inefficient units with models meeting efficiency levels higher than baseline equipment. Under an early replacement program, State governments or electric and gas utilities would provide financial incentives to consumers to retire the appliance early in order to hasten the adoption of more efficient products. For all of the considered products, DOE modeled this policy by applying a 4-percent increase in the replacement rate above the natural rate of replacement for failed equipment. DOE based this percentage increase on program experience with the early replacement of appliances in the State of Connecticut.[55] DOE assumed the program would continue for as long as it would take to ensure that the eligible existing stock in the year that the program began (2012) was completely replaced.

For conventional cooking products, this policy alternative would replace old, inefficient units with models meeting the efficiency levels in TSL 1. DOE estimated that such an early replacement program would be expected to provide 0.01 quads of national energy savings and an NPV of $0.07 billion (at a 7-percent discount rate).

Although DOE estimated that the above early replacement programs for each of the considered products would provide national benefits, they would be much smaller than the benefits resulting from national performance standards. Thus, DOE rejected early replacement incentives as a policy alternative to national performance standards.

*Bulk Government Purchases.* Under this policy alternative, the government sector would be encouraged to shift their purchases to products that meet the target efficiency levels above baseline levels. Aggregating public sector demand could provide a market signal to manufacturers and vendors that some of their largest customers sought suppliers with products that met an efficiency target at favorable prices. This program also could induce ''market pull'' impacts through manufacturers and vendors achieving economies of scale for high-efficiency products. Under such a program, DOE would assume that Federal, State, and local government agencies would administer it. At the Federal level, such a program would add more efficient products for which the Federal Energy Management Program (FEMP) has energy efficient procurement specifications.

However, DOE did not analyze the potential impacts of bulk government purchases for conventional cooking products because over 85 percent of the gas range market already meets TSL 1. FEMP procurement specifications typically promote products in the top 25 percent of the existing product offerings in terms of efficiency. Since most of the gas ranges sold in the base case already comply with such specifications, DOE was not able to consider this program as a source of data for conventional cooking products.

*National Performance Standards (TSL 1 for conventional cooking products).* As indicated in the paragraphs above, none of the alternatives DOE examined would save as much energy as the amended energy conservation standards. Therefore, DOE will adopt the efficiency levels listed in section VI.D.

*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 (IRFA) for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov*.

The Small Business Administration (SBA) classifies manufacturers of household cooking appliances as small businesses if they have 750 or fewer employees. DOE used these small business size standards, published at 61 FR 3286 (Jan. 31, 1996) and codified at 13 CFR part 121, to determine whether any small entities would be required to comply with today's rule. The size standards are listed by North American Industry Classification System (NAICS) code and industry description. Household cooking appliance manufacturing is classified under NAICS 335221.

Bearing in mind the relevant NAICS classification above, DOE determined that none of the manufacturers of microwave ovens sold in the U.S. are small businesses under these SBA classifications. 73 FR 62034, 62130 (Oct. 17, 2008). However, DOE identified two domestic manufacturers of conventional cooking appliances that meet the SBA small business definition and are affected by this rulemaking. *Id.* at 62128. DOE interviewed one of these manufacturers, and also obtained from larger manufacturers information about the impacts of standards on these small manufacturers of conventional cooking products. *Id.* DOE reviewed the proposed rule under the provisions of the Regulatory Flexibility Act and the

[54] Sanchez, M. and A. Fanara, ''New Product Development: The Pipeline for Future ENERGY STAR Growth,'' *Proceedings of the 2000 ACEEE Summer Study on Energy Efficiency in Buildings* (2000) Vol. 6, pp. 343–354.

[55] Nexus and RLW Analytics, *Impact, Process, and Market Study of the Connecticut Appliance Retirement Program: Overall Report, Final.* (Submitted to Northeast Utilities—Connecticut Light and Power and the United Illuminating Company by Nexus Market Research, Inc. and RLW Analytics, Inc.) (2005).

procedures and policies published on February 19, 2003. *Id.* On the basis of this review, DOE determined that it could not certify that its proposed standards for conventional cooking products (TSL 1), if promulgated, would have no significant economic impact on a substantial number of small entities. *Id.* at 62128–29. DOE made this determination due to the potential impact on manufacturers of gas cooking products generally, including small businesses, of the proposed standard's elimination of standing pilot lights. *Id.*

Because of these potential impacts on small manufacturers, DOE prepared an IRFA during the NOPR stage of this rulemaking. DOE provided the IRFA in its entirety in the October 2008 NOPR (73 FR 62034, 62129–30 (Oct. 17, 2008)), and also transmitted a copy to the Chief Counsel for Advocacy of the SBA for review. Chapter 13 of the TSD accompanying this notice contains more information about the impact of this rulemaking on manufacturers.

DOE has prepared a FRFA for this rulemaking, which is presented in the following discussion. DOE is transmitting a copy of this FRFA to the Chief Counsel for Advocacy of the SBA. The FRFA below is written in accordance with the requirements of the Regulatory Flexibility Act.

1. Reasons for the Final Rule

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' The program covers consumer products and certain commercial products (all of which are referred to hereafter as ''covered products''), including residential cooking products. (42 U.S.C. 6292(10)) DOE publishes today's final rule to amend energy conservation standards for conventional cooking appliances by eliminating standing pilot ignition systems.

2. Objectives of, and Legal Basis for, the Rule

EPCA provides criteria for prescribing new or amended standards for covered products and equipment. As indicated above, any new or amended standard for conventional cooking products must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)), although EPCA precludes DOE from adopting any standard that would not result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) Moreover, DOE may not prescribe a standard (1) for certain products, if no test procedure has been established for the product; or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)) The Act (42 U.S.C. 6295(o)(2)(B)(i)) also provides that, in deciding whether a standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, weighing seven factors as described in section II.A of the preamble. EPCA directs DOE to undertake energy conversation standards rulemakings for cooking products according to the schedules established in 42 U.S.C. 6295(h)(2).

3. Description and Estimated Number of Small Entities Regulated

Through market research, interviews with manufacturers of all sizes, and discussions with trade groups, DOE was able to identify two small businesses that manufacture conventional cooking appliances which would be affected by today's rule.

4. Description and Estimate of Compliance Requirements

Potential impacts on all manufacturers of conventional cooking appliances vary by TSL. Margins for all businesses could be impacted negatively by the adoption of any TSL, since all manufacturers have expressed an inability to pass on cost increases to retailers and consumers. The two small domestic businesses under discussion differ from their competitors in that they are focused on cooking appliances and are not diversified appliance manufacturers. Therefore, any rule affecting products manufactured by these small businesses will impact them disproportionately because of their size and their focus on cooking appliances. However, due to the low number of competitors that agreed to be interviewed, DOE was not able to characterize this industry segment with a separate cash-flow analysis due to concerns about maintaining confidentiality and uncertainty regarding the quantitative impact on revenues of a standing pilot ban.

At TSL 1 for gas ovens and gas cooktops, the elimination of standing pilot lights would eliminate one of the niches that these two small businesses serve in the cooking appliance industry. Both businesses also manufacture ovens and cooktops with electronic ignition systems, but the ignition source would no longer be a differentiator within the industry as it is today. The result would be a potential loss of market share since consumers would be able to choose from a wider variety of competitors, all of which operate at much higher production scales.

For all other TSLs concerning conventional cooking appliances (which have not been selected in today's final rule), the impact on small, focused business entities would be proportionately greater than for their competitors since these businesses lack the scale to afford significant R&D expenses, capital expansion budgets, and other resources when compared to larger entities. The exact extent to which smaller entities would be affected, however, is hard to gauge, because manufacturers did not respond to questions regarding all investment requirements by TSL during interviews. Notwithstanding this limitation, research associated with other small entities in prior rulemakings suggests that many costs associated with complying with rulemakings are fixed, regardless of production volume.

Since all domestic manufacturers already manufacture all of their conventional cooking appliances with electronic ignition modules as a standard feature or as an option for consumers, the cost of converting the remaining three domestic manufacturers exclusively to electronic ignition modules would be relatively modest. However, given their focus and scale, any conventional cooking appliance rule would affect these two domestic small businesses disproportionately compared to their larger and more diversified competitor.

5. Significant Issues Raised by Public Comments

Peerless-Premier commented in response to the October 2008 NOPR that it is a privately held company that employs about 300 people located at two manufacturing plants. Peerless-Premier focuses on the value segment of the market, with a large percentage of its business attributable to standing pilot ranges, which represent half of the gas ranges it produces. That company stated that DOE's proposed ban on standing pilot ranges would have a disastrous effect on Peerless-Premier's business. It commented that it has remained competitive largely because of niche positioning in the market, and that many customers choose its product line because of the standing pilot ranges. Without this ''sell benefit,'' Peerless-Premier believes much of its business could go elsewhere, which would ultimately result in significant job losses

at its two manufacturing sites. (Peerless-Premier, No. 42 at pp. 1–2; Peerless Letter, No. 55 at p. 1) AGA expressed concern that, in response to the November 2007 ANOPR, several manufacturers indicated they would be harmed if standing pilots were eliminated, but AGA felt that small business impacts were not adequately addressed. (AGA, Public Meeting Transcript, No. 40.5 at p. 17)

As described earlier, DOE contacted two small manufacturers of conventional cooking products to determine the extent that eliminating standing pilot lights would affect their businesses. Both companies stated they would experience material harm. However, because they did not provide supporting detail, DOE was not able to quantify the exact extent to which smaller entities would be affected. Therefore, DOE cannot verify their claims that they would be severely impacted by a standard that eliminates standing pilot lights. Furthermore, as discussed in section VI.D.2 above, DOE believes alternatives to standing pilot lights exist that would meet the standard in today's final rule, and the Department does not believe manufacturers will be more severely impacted than estimated in the Manufacturers Impact Analysis.

6. Steps DOE Has Taken To Minimize the Economic Impact on Small Manufacturers

In today's final rule, the only TSL under consideration for conventional cooking appliances is the elimination of standing pilot ignition systems for gas ovens and gas cooktops. All manufacturers of such appliances with standing pilot systems stated during interviews that there are no known alternatives on the market today that would allow their appliances to meet safety standards (such as ANSI Z21.1), while not using a line-powered ignition system or standing pilots. Although battery-powered ignition systems have found application in a few cooking products such as the outdoor gas barbeque market, none of such systems have yet to find application in indoor cooking appliances. During an MIA interview, one manufacturer expressed doubt that any third-party supplier would develop such a solution, given the small, and shrinking market that standing pilot-equipped ranges represent. Another manufacturer stated, however, that while the market share of gas cooking products with standing pilot ignition systems has been declining, a substantial market is still served by such appliances. DOE research suggests that battery-powered ignition systems could be incorporated by manufacturers at a modest cost if manufacturer's market research suggested that a substantial number of consumers found such a product attribute important, and that ignition system manufacturers may consider battery-powered ignitions systems a viable niche product when these standards are effective. DOE notes that such systems have been incorporated successfully in a range of related appliances, such as instantaneous water heaters and gas fireplaces. Further, DOE believes that there is nothing in the applicable safety standards that would prohibit such ignition systems from being implemented on gas cooking products. Therefore, DOE believes that households that use gas for cooking and are without electricity will likely have technological options that would enable them to continue to use gas cooking products without standing pilot ignition systems.

In addition to the TSL being considered, the TSD associated with this final rule includes a report referred to in section VII.A in the preamble as the RIA (discussed earlier in this report and in detail in chapter 17 of the TSD accompanying this notice). For conventional cooking appliances, this report discusses the following policy alternatives: (1) No standard, (2) consumer rebates, (3) consumer tax credits, (4) manufacturer tax credits, and (5) early replacement. With the exception of consumer rebates, the energy savings of these regulatory alternatives are at least three times smaller than those expected from the standard levels under consideration. The economic impacts mirror these regulatory alternatives.

The conventional cooking appliance industry is very competitive. The two small businesses differentiate their products from most of their larger competitors by offering their products in non-traditional sizes and with standing pilot ignition systems. Three primary consumer groups purchasing standing pilot-equipped products were identified by manufacturers in their MIA interviews: (1) Consumers without line power near the range (or in the house); (2) consumers who prefer appliances without line power for religious reasons; and (3) consumers seeking the lowest initial appliance cost. Manufacturers could not identify the size of the respective market segments, but demographics suggest that initial price is the primary reason that consumers are opting for standing pilot-equipped ranges. Consumer subgroups that eschew line power and homes without line power cannot alone explain why up to 18 percent of gas cooking appliances are bought with standing pilot ignition systems. Furthermore, all manufacturers already make gas ranges with electronic ignition, including the high-volume domestic manufacturer of conventional cooking appliances with standing pilots. Thus, the primary benefit of standing pilot ignition systems appears to be the differentiation of the small businesses from most higher-volume competitors. While the actual revenue benefit is hard to quantify, both small business manufacturers stated during interviews that the company would expect to experience material economic harm if standing pilot ignition systems were eliminated.

Due to the low number of small business respondents to DOE inquiries and the uncertainty regarding the potential impact of TSL 1 on small conventional cooking appliance manufacturers, DOE was not able to conduct a separate small business impact analysis.

As mentioned above, the other policy alternatives (no standard, consumer rebates, consumer tax credits, manufacturer tax credits, and early replacement) are described in section VII.A of the preamble and in the regulatory impact analysis (chapter 17 of the TSD accompanying this notice). Since the impacts of these policy alternatives are lower than the impacts described above for the proposed standard levels, DOE expects that the impacts to small manufacturers would also be less than the impacts described above for the proposed standard level.

DOE has reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. The previous discussion describes how small business impacts entered into DOE's selection of today's standards for conventional cooking products. DOE made its decision regarding standards by beginning with the highest level considered (TSL 4) and successively eliminating TSLs until it found a TSL that is both technically feasible and economically justified, taking into account other EPCA criteria. As discussed previously, DOE did not receive detailed data from small manufacturers to quantify the impacts of today's standards on small manufacturers of conventional cooking products.

*C. Review Under the Paperwork Reduction Act*

DOE stated in the October 2008 NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance

is not required under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). 73 FR 62034, 62130 (Oct. 17, 2008). DOE received no comments on this in response to the October 2008 NOPR and, as with the proposed rule, today's rule imposes no information and recordkeeping requirements. Therefore, DOE has taken no further action in this rulemaking with respect to the Paperwork Reduction Act.

*D. Review Under the National Environmental Policy Act*

DOE prepared an environmental assessment of the impacts of the potential standards it considered for today's final rule which it has published as chapter 16 within the TSD for the final rule. DOE found the environmental effects associated with today's standard levels for conventional cooking products to be insignificant. Therefore, DOE is issuing a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (NEPA) (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 NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

*E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and 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.

In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have Federalism implications, DOE examined the proposed rule and determined that the rule 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. 73 FR 62034, 62131 (Oct. 17, 2008). DOE received no comments on this issue in response to the October 2008 NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore, DOE is taking no further action in today's final rule with respect to 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 (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; 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, the final regulations meet the relevant standards of Executive Order 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

As indicated in the October 2008 NOPR, DOE reviewed the proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), which imposes requirements on Federal agencies when their regulatory actions will have certain types of impacts on State, local, and Tribal governments and the private sector. 73 FR 62034, 62131 (Oct. 17, 2008). DOE concluded that, although the proposed rule would not contain an intergovernmental mandate, it might result in expenditure of $100 million or more in one year by the private sector. *Id.* Therefore, in the October 2008 NOPR, DOE addressed the UMRA requirements that it prepare a statement as to the basis, costs, benefits, and economic impacts of the proposed rule, and that it identify and consider regulatory alternatives to the proposed rule. *Id.* DOE received no comments concerning the UMRA in response to the October 2008 NOPR. However, as explained above, a number of products originally bundled in this rulemaking have either had standards set separately or will be subject to further rulemaking action. Consequently, this final rule will not result in the expenditure of $100 million or more in any one year. Therefore, DOE is taking no further action in today's final rule with respect to the UMRA.

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

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). *Id.* DOE received no comments concerning Section 654 in response to the October 2008 NOPR, and, therefore, takes no further action in today's final rule with respect to this provision.

*I. Review Under Executive Order 12630*

DOE determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that the proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution. 73 FR 62034, 62131 (Oct. 17, 2008). DOE received no comments concerning Executive Order 12630 in response to the October 2008 NOPR, and, therefore, takes no further action in today's final rule with respect to this Executive Order.

*J. 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 today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any significant energy action. DOE determined that the proposed rule was not a ''significant energy action'' within the meaning of Executive Order 13211. 73 FR 62034, 62132 (Oct. 17, 2008). Accordingly, it did not prepare a Statement of Energy Effects on the proposed rule. DOE received no comments on this issue in response to the October 2008 NOPR. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and has not prepared a Statement of Energy Effects on the rule.

*L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, the OMB, in consultation with the Office of Science and Technology, issued its ''Final Information Quality Bulletin for Peer Review'' (the Bulletin), which was published in the **Federal Register** on January 14, 2005. 70 FR 2664. The purpose of the Bulletin is to enhance the quality and credibility of the Federal government's scientific information. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government. As indicated in the October 2008 NOPR, this includes influential scientific information related to agency regulatory actions, such as the analyses in this rulemaking. 73 FR 62034, 62132 (Oct. 17, 2008).

As more fully set forth in the October 2008 NOPR, DOE held formal in-progress peer reviews of the types of analyses and processes that DOE has used in considering energy conservation standards as part of this rulemaking, and issued a report on these peer reviews. *Id.*

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. 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.

## VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

## List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy Conservation test procedures, Household appliances, Imports.

Issued in Washington, DC, on March 31, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

■ For the reasons stated in the preamble, chapter II, subchapter D, of Title 10 of the Code of Federal Regulations, Part 430 is amended to read as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 of subpart C is amended by revising paragraph (j) to read as follows:

### § 430.32 Energy and water conservation standards and effective dates.

* * * * *

(j) *Cooking Products.* (1) Gas cooking products with an electrical supply cord shall not be equipped with a constant burning pilot light. This standard is effective on January 1, 1990.

(2) Gas cooking products without an electrical supply cord shall not be equipped with a constant burning pilot light. This standard is effective on April 9, 2012.

* * * * *

## Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

**DEPARTMENT OF JUSTICE**
Antitrust Division

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December 16, 2008

Warren Belmar, Esq.
Deputy General Counsel for Energy Policy
Department of Energy
Washington, DC 20585

Dear Deputy General Counsel Belmar:

I am responding to your October 1, 2008, letter seeking the views of the Attorney General about the potential impact on competition of proposed amended energy conservation standards for residential kitchen ranges and ovens, microwave ovens, and commercial clothes washers (CCWs). Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended, ("ECPA"), 42 U.S.C. § 6295(o)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, leaving consumers with fewer competitive alternatives, placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (73 Fed. Reg. 62034, October 17, 2008) and supplementary information submitted to the Attorney General. We also attended the November 13 public meeting on the proposed standards and conducted interviews with industry members. Based on this review, we have determined that legitimate issues arise as to whether the proposed standards adversely effect competition and consumer choice with respect to (1) gas cooking products with standing pilot lights and (2) top loading CCWs.

The proposed standards would extend the ban on constant burning pilot lights, currently applicable to cooking appliances equipped with electrical supply cords, to appliances that are not

equipped with electrical supply cords. As the notice regarding the proposed standards recognizes, certain consumers, including those with religious and cultural practices that prohibit the use of line electricity, those without access to line electricity, and those whose kitchens do not have appropriate electrical outlets, rely on gas cooking appliances with standing pilots in lieu of electrical ignition devices. For these consumers, gas cooking appliances with electronic ignition are not a reasonable substitute. The notice states that gas cooking appliances may become available with technological options such as battery-powered ignition to replace a standing pilot light. However, it is unclear whether such battery-powered devices have been tested for indoor use and whether they are in compliance with safety standards for such use. If these options prove not to be feasible, then the proposed standard could substantially limit consumer choice by eliminating the cooking appliance that most closely meets these consumers' needs.

As to top loading CCWs, it appears that meeting the proposed standards may require substantial investment in the development of new technology that some suppliers of top loading CCWs may not find it economical to make. CCWs are used primarily in multi-housing laundries, with top loading machines accounting for approximately 80 percent of machines in these locations. The remaining 20 percent are front loading machines, which are more energy efficient but significantly more expensive than top loading models. There are only three manufacturers of top loading CCWs selling in the United States. It appears that there is a real risk that one or more of these manufacturers cannot meet the proposed standard. In such a case, CCW purchasers would have fewer competitive alternatives for top loading machines, potentially resulting in purchasers facing higher prices from the remaining top loading manufacturer or manufacturers.

Although the Department of Justice is not in a position to judge whether manufacturers will be able to meet the proposed standards, we urge the Department of Energy to take into account these possible impacts on competition and the availability of options to consumers in determining its final energy efficiency standard for CCWs and residential gas cooking appliances with constant burning pilots. To maintain competition, the Department of Energy should consider keeping the existing standard in place for top loading CCWs. The Department of Energy may wish to consider setting a "no standard" standard for residential gas cooking products with constant burning pilots to address the potential for certain customers to be stranded without an economical product alternative.

The Department of Justice does not believe that the proposed standards for other products listed in the NOPR would likely lead to an adverse effect on competition.

Sincerely,

Deborah Garza

Deborah A. Garza

[FR Doc. E9–7545 Filed 4–7–09; 8:45 am]
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## CFR PARTS AFFECTED DURING APRIL

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