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

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

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8386 of May 26, 2009

National Hurricane Preparedness Week, 2009

By the President of the United States of America

A Proclamation

Each year, hurricanes threaten the safety of American families in coastal and inland communities. These powerful storms can cause heavy rainfall, high winds, tornadoes, and storm surges, which can in turn bring severe flooding, power outages, damage to homes and businesses, and loss of life.

Awareness and preparation are critical to surviving and recovering from hurricanes. During National Hurricane Preparedness Week, I call on all Americans—including private citizens and those working in government, business, and the nonprofit sector—to plan ahead and help secure the safety and property of those who face advancing storms.

Americans can take basic steps before a hurricane arrives. The Federal Emergency Management Agency and the National Hurricane Center recommend developing a family disaster plan, creating and maintaining a disaster supply kit, securing one's home, and designating a safe place to go during a storm. Throughout a storm, individuals should always remain aware of weather conditions. More information on precautionary measures is available at www.nhc.noaa.gov/HAW2/english/intro.shtml.

Organizations at the local, State, and national level play important roles to protect Americans from the effects of hurricanes. Rescue and relief organizations, the private sector, and the news media work to meet demands that emerge before, during, and after a hurricane. Among other services, they distribute safety information and help coordinate relief activities. My Administration is committed to strengthening these efforts and is working every day to prepare for hurricanes and their potential impacts on everyone in the United States.

The threat hurricanes pose to lives and property cannot be eliminated, but preparedness can reduce the dangers these storms pose for our families and communities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States do hereby proclaim May 24 through May 30, 2009, as National Hurricane Preparedness Week. I call upon government agencies, private organizations, media, community groups, schools, and residents of hurricane-prone areas to share information about hurricane preparedness and response to help protect communities and save lives.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, 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. E9–12648
Filed 5–28–09; 8:45 am]
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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 AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1466

RIN 0578–AA45

Environmental Quality Incentives Program; Amendment

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Interim final rule; amendment; extension of comment period.

SUMMARY: The Commodity Credit Corporation (CCC) published in the **Federal Register** of January 15, 2009, an interim final rule with request for comment amending the program regulations for the Environmental Quality Incentives Program (EQIP) to incorporate programmatic changes authorized by the Food, Conservation, and Energy Act of 2008 (2008 Act). On March 12, 2009, CCC corrected language in the interim final rule regarding the erroneous application of the payment limitation provisions to joint operations, and extended the comment period to April 17, 2009. This document amends the interim final rule by expanding the ability of CCC to include an expansion of the exception regarding conservation practices on public land. CCC is also using the opportunity presented by this rulemaking to extend the comment period. However, the extended comment period is limited to the provisions in this amendment.

DATES: This amendment is effective on May 29, 2009. Submit comments on or before June 29, 2009.

ADDRESSES: You may send comments (identified by Docket Number NRCS–IFR–08005), which will be available to the public in their entirety, using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://regulations.gov* and follow the instructions for sending comments electronically.
- *Mail:* Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237 South Building, Washington, DC 20250–2890.
- *Fax:* (202) 720–4265.
- *Hand Delivery:* USDA South Office Building, 1400 Independence Avenue, SW., Room 5237, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.
- This interim final rule may be accessed via Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/*; select the Farm Bill link from the menu; and select the Interim final link from beneath the Final and Interim Final Rules Index title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

To view public comments, please ask the guard at the entrance to the South Office Building to call (202) 720–4527 in order to be escorted into the building.

FOR FURTHER INFORMATION CONTACT: Gregory Johnson, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Room 5237 South Building, P.O. Box 2890, Washington, DC 20013–2890; Phone: (202) 720–1845; Fax: (202) 720–4265.

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (FR Doc. 93–24523, September 30, 1993), the interim final rule published on January 15, 2009, is an economically significant regulatory action, and NRCS conducted an economic analysis of the potential impacts associated with this program. The administrative record is available for public inspection in Room 5831 South Building, USDA, 1400 and Independence Avenue, SW., Washington, DC NRCS reviewed the economic analysis prepared for the January 15, 2009, interim final rule and determined that the provisions of this interim final rule do not alter the assessment and the findings that were originally prepared. A copy of the analysis is available upon request from the Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Room 5237 South Building, Washington, DC 20250–2890 or electronically at: *http://www.nrcs.usda.gov/programs/eqip/* under the EQIP Rules and Notices with Supporting Documents title.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 2904(c) of the 2008 Act requires that the Secretary use the authority in section 808(2) of title 5, United States Code, which allows an agency to forego SBREFA's usual 60-day congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the congressional intent to have the conservation programs, authorized or amended by Title II, in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

Executive Order 13175

This interim final rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this interim final rule on Indian Tribal Governments and has concluded that this rule will not have substantial direct effects 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim final rule because neither the CCC nor the Natural Resources Conservation Service (NRCS) is required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

Availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). A

programmatic environmental assessment has been prepared in association with the January 15, 2009, interim final rule. The provisions of this interim final rule do not alter the assessment and the findings that were originally prepared. The analysis had determined that there would not be a significant impact to the human environment and as a result an Environmental Impact Statement was not required to be prepared (40 CFR 1508.13). The EA and FONSI are available for review and comment for an additional 30 days from the date of publication of this amendment to the interim final rule in the **Federal Register**. A copy of the EA and FONSI may be obtained from the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/.* A hard copy may also be requested from the following contact and address: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI. Public comment may be submitted by any of the following means: (1) E-mail comments to *NEPA2008@wdc.usda.gov,* (2) e-mail to egov Web site—*http://www.regulations.gov,* or (3) written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, 1400 Independence Ave., SW., Washington, DC 20250.

Civil Rights Impact Analysis

NRCS determined through a Civil Rights Impact Analysis that the January 15, 2009, interim final rule disclosed no disproportionately adverse impacts for minorities, women, or persons with disabilities. The provisions of this interim final rule do not alter the assessment and the findings that were originally prepared.

Paperwork Reduction Act

Section 2904 of the 2008 Act provides that the promulgation of regulations and the administration of Title II of this Act shall be made without regard to chapter 35 of Title 44 of the United States Code, also known as the Paperwork Reduction Act. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this amendment or the January 15, 2009, interim final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at parts 614, 780, and 11 of this title must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Title III, section 304, requires that for each proposed major regulation with a primary purpose to regulate issues of human health, human safety, or the environment, USDA is to publish an analysis of the risks addressed by the regulation and the costs and benefits of the regulation. NRCS has determined that such a risk assessment does not apply to this interim final rule. NRCS recognizes that although such assessments can be quite helpful, the Act pertains only to a rule that has been designated as a ''proposed major regulation.'' NRCS does not consider ''interim final'' or ''final'' rules as falling into the category of proposed major regulations.

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of the January 15, 2009, rulemaking action on State, local, and Tribal Governments, and the public. NRCS determined that such action did not compel the expenditure of $100 million or more in any one year (adjusted for inflation) by any State, local, Tribal Governments, or anyone in the private sector. Additionally, the provisions of this interim final rule do not alter this determination. Therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Background

The CCC published an interim final rule in the **Federal Register** of January 15, 2009, (74 FR 2293) amending the program regulations for EQIP found at 7 CFR part 1466. NRCS published a correction to the interim final rule in the **Federal Register** on March 12, 2009, to address the incorrect application of the $300,000 payment limitation to joint operations.

Under the January 15, 2009, interim final rule (IFR), NRCS, on behalf of CCC, can make an EQIP payment for implementation of a conservation practice on public land provided that the public land is a working component of the participant's agricultural and forestry operation, the participant has control of the land for the term of the contract, and the conservation practice on public land would contribute to an improvement in the identified resource concern that is on private land. NRCS includes in this Amendment to the IFR an expansion of this exception regarding conservation practices on public land. In particular, NRCS is removing the requirement that the benefit of the conservation practice on public land address an identified resource concern that is on private land. NRCS has determined that the EQIP statute should not be interpreted so narrowly to preclude the ability of private landowners to enroll part of their overall agricultural or forestry operation simply because the resource concerns exist on land, though held by a public agency, that is managed as part of the private landowner's operation pursuant to a long-term lease from a public agency.

Therefore, NRCS is amending the January 15, 2009, IFR to authorize an EQIP contract to include conservation practices that address an identified resource concern on public land where a participant manages such lands as a working component of their agricultural or forestry operation, and the participant has control of the land for the term of the EQIP contract.

■ For the reasons stated in the preamble, the CCC amends part 1466 of Title 7 of the Code of Federal Regulations as set forth below:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

■ 1. The authority citation for part 1466 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839aa–8.

■ 2. Amend § 1466.8 by revising paragraph (c)(2)(iii) to read as follows:

§ 1466.8 Program requirements.

* * * * *

(c) * * *

(2) * * *

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern; or

* * * * *

Signed this 22 day of May 2009, in Washington, DC.

Leonard Jordan,

Acting Vice President, Commodity Credit Corporation and Acting Chief, Natural Resources Conservation Service.

[FR Doc. E9–12562 Filed 5–28–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1779

Rural Housing Service

7 CFR Part 3575

Rural Business—Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4280

Rural Business—Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Part 5001

[FR Doc. E9–4839]

RIN 0570–AA65

Rural Development Guaranteed Loans

AGENCIES: Rural Business—Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Interim rule; delay of the effective date.

SUMMARY: Rural Development is delaying the effective date of the interim rule for Rural Development Guaranteed Loans, which was published on December 17, 2008, to October 1, 2009. The interim rule establishes a unified guaranteed loan platform for the enhanced delivery of four existing Rural Development guaranteed loan programs: Community Facilities; Water and Waste Disposal; Business and Industry; and Rural Energy for America Program, formerly known as Renewable Energy Systems and Energy Efficiency Improvement Program.

DATES: The effective date of the interim rule, which published on December 17, 2008 [73 FR 76698], delayed until February 17, 2009, [74 FR 2823], delayed until March 9, 2009 [74 FR 7179], delayed until June 1, 2009 [74 FR 9759], is further delayed until October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Bonnet, Rural Development, Business and Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3201, Washington, DC 20250–3201; e-mail: *Rick.Bonnet@wdc.usda.gov;* telephone (202) 720–1804.

SUPPLEMENTARY INFORMATION: On January 16, 2009 [74 FR 2823], Rural Development delayed the original effective date of the interim rule from January 16, 2009, to February 17, 2009, because there was insufficient time to correct a technical error in the interim rule before the interim rule became effective on January 16, 2009.

Subsequently, Rural Development again delayed the effective date from February 17, 2009, to March 9, 2009 [74 FR 7179, February 13, 2009] soliciting public comments to delay the effective date to June 1, 2009. The effective date was further delayed from March 9, 2009 to June 1, 2009 [74 FR 9759, March 6, 2009]. As stated in the February 13, 2009, **Federal Register**, Rural Development had identified several administrative actions, including providing the best guidance to its field staff to ensure the successful implementation of the interim rule.

As noted in the February 13, 2009, **Federal Register**, Rural Development changed the effective date, as is provided for under the Administrative Procedures Act (5 U.S.C. 553(b)(3)(B)), because:

1. Implementing the interim rule on February 17, 2009, would have created substantial legal and operational risks to the affected programs because the rule contains certain flaws that must be corrected and would not have provided the Agency sufficient time to properly train field staff and make changes to information technology systems critical to the implementation of these programs. These actions could not have been completed by February 17, 2009.

2. The two week extension would allow the public a reasonable opportunity to comment on this proposed extension of the effective date to June 1, 2009, and the Agency to consider such comments before making the decision to make such extension.

3. Extending the effective date to June 1, 2009, allowed the Agency to finish the 60-day review described in the January 20, 2009, memo from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review.''

As noted in the March 6, 2009, **Federal Register**, the Agency received three comments on the extension of the effective date of the interim rule to June 1, 2009. None of the commenters suggested that the interim rule become effective prior to June 1, 2009, with one of the commenters suggesting that ''the regulation be delayed as long as possible,'' noting that ''implementation during the processing of the President's stimulus package will impose burdens on both lenders and USDA staff.'' The Agency, in a separate action, is implementing new provisions for the business and industry guaranteed loan program as a result of the American Recovery and Reinvestment Act of 2009. Extending the effective date to October 1, 2009, would coincide with the beginning of a new Federal Fiscal Year, thereby providing program continuity. Further, consideration of the comments the Agency received on the implementation of the interim rule has taken longer than anticipated. Finally, the Agency became aware during a January 2009 meeting with Agency field staff, which was followed by a meeting with several lenders, that additional time is required to both familiarize Agency staff with the new rule and to provide additional training to both Agency staff and lenders. For these reasons, the Agency is extending the effective date until October 1, 2009.

Dated: May 22, 2009.

William F. Hagy III,

Acting Under Secretary, Rural Development.

[FR Doc. E9–12560 Filed 5–28–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Part 235

[CBP Dec. 09–18]

Western Hemisphere Travel Initiative: Designation of Enhanced Driver's Licenses and Identity Documents Issued by the States of Vermont and Michigan and the Provinces of Quebec, Manitoba, British Columbia, and Ontario as Acceptable Documents To Denote Identity and Citizenship

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This document announces that the Commissioner of U.S. Customs and Border Protection is designating enhanced driver's licenses and identification documents issued by the States of Vermont and Michigan and the Canadian Provinces of Quebec, Manitoba, British Columbia, and Ontario as acceptable documents for purposes of the Western Hemisphere Travel Initiative. These documents may be used to denote identity and citizenship of, as appropriate, U.S. or Canadian citizens entering the United States from within the Western Hemisphere at land and sea ports of entry.

DATES: This designation is effective on June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, Western Hemisphere Travel Initiative, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, 202–344–1220.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638 (Dec. 17, 2004), as amended, provides that upon full implementation, U.S. citizens and Bermudian, Canadian, and Mexican nationals will be required to present a passport or such alternative documents as the Secretary of Homeland Security (Secretary) designates as satisfactorily establishing identity and citizenship when entering the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State (DOS) promulgated a joint final rule, effective on June 1, 2009, that implements the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the land and sea final rule). The land and sea final rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico will be required to present when entering the United States at land and sea ports of entry from within the Western Hemisphere (which includes contiguous territories and adjacent islands of the United States).

Under the land and sea final rule, one type of citizenship and identity document that U.S. or Canadian citizens may present upon entry to the United States is an enhanced driver's license or identification document [1] (EDL) designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA, as amended. Section 235.1(d) of title 8 of the Code of Federal Regulations (CFR), as amended by the WHTI land and sea final rule, states:

> Upon the designation by the Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United States, U.S. citizens and Canadians may be permitted to present these documents in lieu of a passport upon entering or seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of designated documents will also be made available to the public.

EDL Programs

DHS is committed to working with the various States of the United States and the Government of Canada to facilitate the development of State and province-issued EDLs as travel documents that denote identity and citizenship. To establish an EDL program, each State or province [2] must enter into an agreement with DHS or U.S. Customs and Border Protection (CBP) to develop an acceptable EDL document. Each EDL program is specific to each State or province based on specific factors, such as the State's or province's funding, technology, and other developments and implementation factors. Acceptable EDL documents must have compatible technology and security criteria, and must respond to CBP's operational concerns. The EDL must include technologies that facilitate inspection at ports of entry. EDL documents also must be issued via a secure process and include technology that facilitates travel to satisfy WHTI requirements.

On an ongoing basis, DHS will announce, by publication of a notice in the **Federal Register**, that a State's and/or province's EDL has been designated as a WHTI-compliant document for purposes of entering the United States by land or sea from within the Western Hemisphere. (*See* the designations at 73 FR 18421 (April 3, 2008) for EDLs issued by the State of Washington and at 73 FR 73343 (December 2, 2008) for EDLs issued by the State of New York.) DHS will make available to the public a list of the documents designated as WHTI compliant. A list of States and provinces that issue EDLs is available at *http://www.getyouhome.gov*. The Secretary delegated to the Commissioner of CBP the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including State-specific enhanced driver's licenses and identity documents and Canadian province-specific enhanced driver's licenses and identity documents.

Vermont EDL Program

Vermont has established a voluntary program to develop enhanced driver's licenses and identification cards (EDLs) that would denote identity and U.S. citizenship. On September 26, 2007, DHS and the State of Vermont signed a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate EDLs with facilitative technology to be used for border crossing purposes. On February 15, 2008, CBP approved the plan outlining the business process for the implementation of the Vermont EDL program. Under the terms of this MOA and business plan, Vermont EDLs will be issued only to Vermont residents that can establish both identity and U.S. citizenship.

Following successful field and technical testing, the Commissioner of CBP has determined that the EDLs issued by the State of Vermont according to the terms of the above agreement and business plan meet the requirements of section 7209 of the IRTPA and are acceptable documents to

[1] The ''enhanced driver's license or identification document'' may be in one of two forms, as decided by the issuing authority, provided that the document (card) denotes identity and citizenship and meets technical requirements: (1) An enhanced driver's license or (2) an enhanced identity card. The designation ''EDL'' covers both documents.

[2] For a province of Canada, the agreement will be between DHS/CBP and the Canada Border Services Agency working with and representing the province.

denote identity and U.S. citizenship for purposes of entering the United States at land and sea ports of entry from within the Western Hemisphere under the final rule.

Michigan EDL Program

Michigan has established a voluntary program to develop enhanced driver's licenses and identification cards (EDLs) that would denote identity and U.S. citizenship. On October 13, 2008, DHS and the State of Michigan signed a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate EDLs with facilitative technology to be used for border crossing purposes. On the same date, CBP and the State of Michigan reached agreement on the plan outlining the business process for the implementation of the Michigan EDL program. Under the terms of this MOA and business plan, Michigan EDLs will be issued only to Michigan residents that can establish both identity and U.S. citizenship.

Following successful field and technical testing, the Commissioner of CBP has determined that the EDLs issued by the State of Michigan according to the terms of the above agreement and business plan meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and U.S. citizenship for purposes of entering the United States at land and sea ports of entry from within the Western Hemisphere under the final rule.

Quebec EDL Program

The Province of Quebec has established a voluntary program to develop an enhanced driver's license that would denote identity and Canadian citizenship. On April 1, 2008, CBP and the Canada Border Services Agency (CBSA) entered into a Memorandum of Understanding Regarding the Use, Disclosure and Storage of Canadian Enhanced Driver's License Information relating to CBP's access to EDL information for documents, including the Quebec EDL for border crossing purposes. On January 16, 2009, following negotiations between CBP and the Canadian and Quebec governments in November 2008, the CBSA and Citizenship and Immigration Canada transmitted to CBP the Province of Quebec's official business plan outlining the approach and process by which the Société de l'assurance automobile du Québec (SAAQ) will make available enhanced driver's licenses and identification cards to qualified Canadian citizens residing in the Province of Quebec. On February 2, 2009, CBP determined that, contingent upon successful technical testing, SAAQ Driver's Licenses Plus produced in accordance with the Province of Quebec's business plan were anticipated to be designated as documents denoting identity and Canadian citizenship for purposes of entering the United States by land or sea.

Following successful field and technical testing, the Commissioner of CBP has determined that Driver's Licenses Plus issued by the Province of Quebec according to the terms of the business plan approved by CBP meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and Canadian citizenship for purposes of entering the United States at land and sea ports of entry from within the Western Hemisphere under the final rule.

Manitoba EDL Program

The Province of Manitoba has established a voluntary program to develop enhanced driver's licenses and identification cards (EDLs) that would denote identity and Canadian citizenship. On April 1, 2008, CBP and the CBSA entered into a Memorandum of Understanding Regarding the Use, Disclosure and Storage of Canadian Enhanced Driver's License Information relating to CBP's access to EDL information for documents, including the Manitoba EDL for border crossing purposes. On June 12, 2008, following negotiations between CBP and the Canadian and Manitoba governments, the CBSA and Citizenship and Immigration Canada transmitted to CBP the Province of Manitoba's official business plan outlining the approach and process by which Manitoba will make available EDLs to qualified Canadian citizens residing in the Province of Manitoba. On July 3, 2008, CBP determined that, contingent upon successful technical testing, Manitoba EDLs produced in accordance with the Province of Manitoba's business plan were anticipated to be designated as documents denoting identity and Canadian citizenship for purposes of entering the United States by land or sea.

Following successful field and technical testing, the Commissioner of CBP has determined that the EDLs issued by the Province of Manitoba according to the terms of the business plan approved by CBP meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and Canadian citizenship for purposes of entering the United States at land and sea ports of entry from within the Western Hemisphere under the final rule.

British Columbia EDL Program

The Province of British Columbia has established a voluntary program to develop enhanced driver's licenses and identification cards (EDLs) that would denote identity and Canadian citizenship. On April 1, 2008, CBP and the CBSA entered into a Memorandum of Understanding Regarding the Use, Disclosure and Storage of Canadian Enhanced Driver's License Information relating to CBP's access to EDL information for documents, including the British Columbia EDL for border crossing purposes. On April 9, 2009, following negotiations between CBP and the Canadian and British Columbia governments, the CBSA and Citizenship and Immigration Canada transmitted to CBP the Province of British Columbia's official business plan outlining the approach and process by which British Columbia will make available EDLs to qualified Canadian citizens residing in the Province of British Columbia. On April 16, 2009, CBP determined that, contingent upon successful technical testing, British Columbia's EDLs produced in accordance with the province's business plan were anticipated to be designated as documents denoting identity and Canadian citizenship for purposes of entering the United States by land or sea.

Following successful field and technical testing, the Commissioner of CBP has determined that the EDLs issued by the Province of British Columbia according to the terms of the business plan approved by CBP meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and Canadian citizenship for purposes of entering the United States at land and sea ports of entry from within the Western Hemisphere under the final rule.

Ontario EDL Program

The Province of Ontario has established a voluntary program to develop enhanced driver's licenses and identification cards (EDLs). On April 1, 2008, CBP and CBSA entered into a Memorandum of Understanding Regarding the Use, Disclosure and Storage of Canadian Enhanced Driver's License Information relating to CBP's access to EDL information for documents, including the Ontario EDL for border crossing purposes. On May 6, 2009, following negotiations between the parties, CBSA transmitted to CBP the Province of Ontario's official business plan outlining the approach

and process by which Ontario will make available EDLs to qualified Canadian citizens residing in the Province of Ontario. On May 11, 2009, CBP determined that, contingent upon successful technical testing, Ontario EDL's produced in accordance with the Province of Ontario's business plan were anticipated to be designated as documents denoting identity and Canadian citizenship for purposes of entering the United States by land or sea.

Following successful field and technical testing, the Commissioner of CBP has determined that the EDLs issued by the Province of Ontario according to the terms of the business plan approved by CBP meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and Canadian citizenship for purposes of entering the United States at land and sea ports of entry from within the Western Hemisphere under the final rule.

Designation

This notice announces that the Commissioner of CBP has designated the EDLs issued by the States of Vermont and Michigan and the Provinces of Quebec, Manitoba, British Columbia, and Ontario as acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from within the Western Hemisphere, pursuant to section 7209 of IRTPA and the final rule, 8 CFR 235.1(d)

Dated: May 20, 2009.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E9–12513 Filed 5–28–09; 8:45 am]

BILLING CODE 9111–14–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket Nos. R–1334 and R–1350]

Reserve Requirements for Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting, with certain revisions, its interim final rule that amended Regulation D (Reserve Requirements of Depository Institutions) to direct Federal Reserve Banks to pay interest on certain balances held at Federal Reserve Banks by or on behalf of certain depository institutions. The Board is also amending Regulation D to authorize the establishment of limited-purpose accounts, called ''excess balance accounts,'' at Federal Reserve Banks for the maintenance of excess balances of eligible institutions. These excess balance accounts are intended to permit eligible institutions to earn interest on their excess balances without significantly disrupting established business relationships with their correspondents.

DATES: This final rule is effective July 2, 2009.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202/452–3565), or Dena L. Milligan, Attorney (202/452–3900), Legal Division, or Seth Carpenter, Deputy Associate Director (202/452–2385), or Margaret Gillis DeBoer, Section Chief (202/452–3139), Division of Monetary Affairs; for information with respect to the clearing balance policy and float calculations, contact Jonathan Mueller, Senior Financial Analyst (202/530–6291), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD) only, contact 202/263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Interest on Balances at Federal Reserve Banks

A. Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''the Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions. Title II of the Financial Services Regulatory Relief Act of 2006 (the ''2006 Act'') (Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006)) amended section 19 of the Act by authorizing the Federal Reserve Banks (''Reserve Banks'') to pay earnings on balances maintained at the Reserve Banks by or on behalf of certain depository institutions. The original effective date of this authority was October 1, 2011. Section 128 of the Emergency Economic Stabilization Act of 2008 (the ''2008 Act'') (Pub. L. 110–343, 122 Stat. 3765 (Oct. 3, 2008)) accelerated the effective date of this authority to October 1, 2008.

Section 19 of the Act now provides that Reserve Banks may pay earnings on balances held at the Reserve Banks by or on behalf of certain depository institutions at least once each quarter at a rate not to exceed the general level of short-term interest rates. Depository institutions that are eligible to receive earnings on their balances held at Reserve Banks include the institutions described in section 19(b)(1)(A) of the Act[1] and ''any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978).''[2] The Act also provides that the Board may prescribe regulations concerning the payment of earnings, the distribution of earnings to the depository institutions that maintain balances or on whose behalf balances are maintained, and ''the responsibilities of depository institutions, Federal Home Loan Banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings attributable to balances maintained * * * in a Federal Reserve bank by any such entity on behalf of depository institutions.''[3]

Regulation D, which implements the provisions of section 19 of the Act, also provides that a depository institution must maintain its required reserves in the form of cash in its vault, or if vault cash is insufficient, in the form of a balance in an account at a Reserve Bank.[4] A depository institution may maintain balances at a Reserve Bank in an account in its own name, or it may choose another institution as its ''pass-through correspondent.''[5] Under a

[1] Section 19(b)(1)(A) defines ''depository institution'' as ''(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; (ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; (iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act; (iv) any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act; (v) any member as defined in section 2 of the Federal Home Loan Bank Act; [and] (vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act.'' 12 U.S.C. 461(b)(1)(A).

[2] Federal Reserve Act section 19(b)(12)(C), 12 U.S.C. 461(b)(12)(C).

[3] Federal Reserve Act section 19(b)(12), 12 U.S.C. 461(b)(12).

[4] 12 CFR 204.5(a)(1) (formerly 12 CFR 204.3(b)(1)).

[5] The 2006 Act amended section 19 of the Act to authorize member banks to enter into pass-through account arrangements. Prior to the 2006 Act, only nonmember banks were authorized to enter into such arrangements. As published in today's **Federal**

''pass-through correspondent'' arrangement, the pass-through correspondent holds its respondent's required reserve balances in the correspondent's account at a Reserve Bank. The pass-through correspondent is responsible for holding sufficient balances in its account at the Reserve Bank to satisfy its own reserve balance requirement (if any), its own contractual clearing balance (if any), and the aggregate reserve balance requirements of its respondents. The Reserve Bank's debtor-creditor relationship is solely with the pass-through correspondent and not with any of the correspondent's respondents. Accordingly, Regulation D provides that the balance in a pass-through correspondent's account at a Reserve Bank represents a liability of the Reserve Bank solely to the correspondent, notwithstanding the fact that part or all of that balance may represent the funds of the correspondent's respondents.[6] Consequently, a pass-through correspondent must show the entire balance in its Reserve Bank account on the correspondent's own balance sheet as an asset, even if the balance consists, in whole or in part, of amounts that are passed through on behalf of a respondent.[7]

B. Interim Final Rule on Payment of Interest on Balances at Federal Reserve Banks

On October 9, 2008, the Board published an interim final rule amending Regulation D to direct the Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements (''required reserve balances'') and balances held in excess of required reserve balances and clearing balances (''excess balances'') (73 FR 5948 (Oct. 9, 2008)). The interim final rule directed Reserve Banks to pay interest on such balances held by or on behalf of ''eligible institutions.'' The interim final rule defined the new term ''eligible institution'' to mean an institution eligible to earn interest on balances held at the Federal Reserve Banks under the 2006 Act.

The interim final rule provided that Reserve Banks would pay interest on required reserve balances at a rate equal to the average targeted federal funds rate over the reserve maintenance period less 10 basis points and that Reserve Banks would pay interest on excess balances at a rate equal to the lowest targeted federal funds rate during the maintenance period less 75 basis points. Since publishing the interim final rule, the Board has adjusted the method for determining the rate of interest on excess balances three times (73 FR 65506 (Nov. 4, 2008), 73 FR 67713 (Nov. 17, 2008), 73 FR 78616 (Dec. 23, 2008)) and the method for determining the rate of interest on required reserves balances twice (73 FR 67713 (Nov. 17, 2008), 73 FR 78616 (Dec. 23, 2008)). Currently, the rate of interest on both required reserve balances and excess balances is ¼ percent.[8] Additionally, in its December amendments, the Board amended the regulation to specify that it may from time to time determine any other rate for payment of interest on required reserve balances and excess balances.

The interim final rule deemed any excess balance held by a pass-through correspondent in the correspondent's account, when the correspondent was not itself an eligible institution, to be held on behalf of the pass-through correspondent's respondents. Further, the interim final rule permitted, but did not require, pass-through correspondents to pass back to their respondents the interest paid on balances held on behalf of respondents. The interim final rule also provided that when a pass-through correspondent passes back interest to its respondents, such a payment is not a payment of interest on a demand deposit for purposes of Regulation Q (12 CFR part 217). The interim final rule also defined the new terms used therein.

C. Request for Public Comment and Summary of Comments

The Board requested comment on all aspects of the interim final rule. In response, the Board received 19 comments, consisting of comments from eight depository institutions, four financial institution trade associations, two research organizations, and five individuals. Two commenters fully supported the interim final rule, but made suggestions regarding other aspects of Regulation D. Six commenters expressed concerns about the potential adverse impact of the interim final rule on correspondent-respondent relationships. Other commenters expressed monetary policy concerns related to paying interest on balances.

D. General Comments and Analysis

Two commenters supported paying interest on balances held at the Reserve Banks by or on behalf of eligible institutions as a monetary policy tool. One commenter noted that payment of interest on balances at Reserve Banks provides depository institutions with ''a reasonable option [for] needed liquidity.'' In contrast, six commenters stated that paying interest on excess balances encouraged banks to remove funds from the federal funds market, and thus, reduced inter-bank lending and liquidity. One commenter suggested that, in order to avoid negative effects on liquidity, the Federal Reserve should pay interest on required reserve balances, but not on excess balances. One commenter stated that paying interest on excess balances could encourage financial institutions to neglect other markets where those institutions could obtain higher returns. The Board also received one comment on market conditions in general, but not specifically related to paying interest on balances held at the Reserve Banks.

The Board has carefully considered the comments about the effects of paying interest on balances at Reserve Banks. In the past, the absence of interest payments on required reserve balances acted as a tax on depository institutions' issuance of deposits subject to reserve requirements. To the extent that depository institutions could not satisfy reserve requirements with vault cash, they were required to hold more balances than they otherwise would in a non-interest bearing account at a Reserve Bank. Further, the absence of interest payments on excess balances meant that, when reserve supply significantly exceeds demand, the federal funds rate could fall to as low as zero.

The Board continues to believe that the ability to pay interest on balances held at Reserve Banks promotes efficiency and stability of the banking sector. Paying interest on required reserve balances also eliminates much of the implicit reserve tax and lessens the incentives for depository institutions to engage in reserve-avoidance behavior, which absorbs real resources and diminishes the efficiency of the banking system. By paying interest on excess balances, the Federal Reserve can expand its balance sheet as necessary to provide sufficient liquidity to support financial stability while implementing monetary policy that is appropriate in light of macroeconomic objectives of maximum employment and price stability.

Register, the Board is also amending Regulation D to conform the regulation to the 2006 Act.

[6] 12 CFR 204.5(d)(3) (formerly 12 CFR 204.3(i)(2)).

[7] Similarly, a correspondent that is not acting in a pass-through capacity must also show its entire account balance at the Reserve Bank as an asset on its own balance sheet. Regulation D, however, does not specifically address correspondents other than pass-through correspondents.

[8] 12 CFR 204.10(b).

In order to help foster trading in the federal funds market, the Board has made adjustments to the rates at which the Reserve Banks pay interest on required reserve balances and excess balances, and will continue to evaluate, and make any necessary adjustments to, the appropriate rate in light of evolving market conditions. Accordingly, the Board has determined that the Reserve Banks will continue to pay interest on required reserve and excess balances held at Reserve Banks by or on behalf of eligible institutions.

One commenter expressed concern that under the interim final rule, excess balances held by a correspondent on behalf of respondents ''would become demand deposits on the correspondent's balance sheet,'' and thus the correspondent would be required to hold reserves against those balances. Prior to the implementation of the interim final rule, a correspondent was required to hold reserves against any respondent excess funds held as a deposit subject to immediate withdrawal by the respondent. The implementation of paying interest on balances at Reserve Banks has not changed the accounting and reporting treatment of such balances for purposes of reserve requirements.

The remaining comments concerned reserve requirements generally, limits on transfers from savings deposit accounts, and member-bank pass-through arrangements. Two comments addressed Regulation D's limitation on certain convenient transfers from savings deposits: One comment suggested broadening the definition of ''in person'' transfer, while the other comment suggested removing the numeric limitations on certain convenient transfers from savings deposits. One commenter recommended eliminating reserve requirements, while another commenter recommended increasing reserve requirements ratios.

The Board is not exercising its authority at this time to eliminate reserve requirements or to change any required reserve ratios at this time, even though the 2008 Act made both authorities effective in 2008. The Board may consider such changes in the future in the context of a broader review of the role of reserve requirements in the conduct of monetary policy. Finally, as explained in the companion Regulation D rulemaking announced today, the Board is eliminating the prohibition on member bank pass-through accounts and is amending the numeric limitations on convenient transfers from savings deposits to remove the sublimit that applied to checks and drafts.[9]

E. Section-by-Section Analysis

1. Section 204.2(v) Definition of Clearing Balance

The interim final rule defined the new term ''clearing balance'' as ''the amount that an eligible institution holds to satisfy a contractual clearing balance with a Federal Reserve Bank, in addition to any required reserve balance.'' The Board received no comments on this provision of the interim final rule. As part of the final rule, the Board is adopting a definition of ''clearing balance'' that more accurately reflects calculations of account balances and interest payments. The final rule defines ''clearing balance'' as ''the average balance held in an account at a Federal Reserve Bank by an institution over a reserve maintenance period to satisfy its contractual clearing balance with a Reserve Bank.'' Thus, the amount of funds an institution actually maintains for clearing purposes may be different from its ''contractual clearing balance,'' which is the amount that the institution has agreed to maintain, on average, over the reserve maintenance period. Further, the phrase ''in addition to any required reserve balance'' is unnecessary in light of the new definition of ''contractual clearing balance,'' which specifies that such amount is in addition to the institution's reserve balance requirement.[10]

As stated in the interim final rule, only certain institutions are eligible to receive earnings on their balances at Reserve Banks (''eligible institutions''). Accordingly, the interim final rule's definition of ''clearing balance'' was restricted to ''eligible institutions.'' Institutions that are not ''eligible institutions,'' however, may hold balances for clearing purposes in the institution's Reserve Bank account. Therefore, the Board is adopting a definition of ''clearing balance'' that is not limited to institutions that are eligible to receive earnings on balances at Reserve Banks. For ease of reference, the final rule places all the definitions in a single section of Regulation D (§ 204.2), and thus, the rule redesignates § 204.10(d)(1) as § 204.2(v).

2. Section 204.2(y) Definition of Eligible Institution

Section 19(b)(12) of the Act permits Reserve Banks to pay interest on balances held by or behalf of ''depository institutions.'' Because section 19(b)(12)(C)'s definition of ''depository institution'' is broader than the definition of that term in section 19(b)(1)(A) of the Act and in Regulation D, the interim final rule used the new term ''eligible institution'' to refer to those ''depository institutions'' listed in section 19(b)(12)(C) that are eligible to receive interest on their balances. The Board received no comment on this definition and is retaining the current provision but moving it to the definitions section of the regulation, redesignated as § 204.2(y).

3. Section 204.2(z) Definition of Excess Balance

The interim final rule defined ''excess balance'' as ''the average balance held in an account at a Federal Reserve Bank by or on behalf of an eligible institution over a reserve maintenance period that exceeds the sum of the required reserve balance and any clearing balance.'' The Board received no comments on this definition and is retaining the current provision but moving it to the definitions section of the regulation, redesignated as § 204.2(z), with one technical amendment. Like the definition of ''clearing balance,'' discussed *supra,* the interim final rule's definition of ''excess balance'' was limited to eligible institutions. Because institutions other than eligible institutions may maintain excess balances at Reserve Banks, the Board is adopting a definition of ''excess balances'' in the final rule that is not limited to ''eligible institutions.''

4. Section 204.2(bb) Definition of Required Reserve Balance

The interim final rule defined ''required reserve balance'' as ''the average balance held in an account at a Federal Reserve Bank by or on behalf of an eligible institution over a reserve maintenance period to satisfy the reserve requirements of this part.'' The Board received no comments on this definition and is retaining the current provision but moving it to the definitions section of the regulation, with one technical amendment, redesignated as section 204.2(bb). Because the term ''required reserve balance'' is used in Regulation D in contexts other than paying earnings on balances at Reserve Banks, the definition of the term in the final rule is not limited to ''eligible institutions.''

[9] *See* final amendments to Regulation D elsewhere in today's **Federal Register**.

[10] *See* final amendments to Regulation D elsewhere in today's **Federal Register** that define ''contractual clearing balance'' as ''an amount that an institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to balances the institution may hold to satisfy its reserve balance requirement.''

5. Section 204.2(cc) Definition of Targeted Federal Funds Rate

The interim final rule defined ''targeted federal funds rate'' as ''the federal funds rate established from time to time by the Federal Open Market Committee.'' The Board received no comments on this definition and is retaining the current provision but moving it to the definitions section of the regulation, redesignated as § 204.2(cc).

6. Section 204.10(a) Payment of Interest on Balances

The Board amended Regulation D to direct the Reserve Banks to pay interest on required reserve balances and excess balances maintained at Reserve Banks by or on behalf of an eligible institution. The Reserve Banks make interest payments within the existing framework for reserve computation and maintenance, which includes reserve averaging, carryover provisions, and reserve deficiency charges. For both excess balances and required reserve balances, Reserve Banks pay interest on average balances maintained over the reserve maintenance period. This approach is consistent with the current reserves framework under which compliance with reserve requirements is measured over either a seven-day or a fourteen-day reserve maintenance period, depending on the size of the institution. Interest is credited to eligible institutions after the close of the maintenance period (usually 15 days thereafter) in order to apply reserve carryover provisions.

One commenter stated that paying interest on required reserve balances rendered useless the current ''as-of adjustment'' process for correction of errors from previous reserve maintenance periods. An as-of adjustment is a memorandum item used by the Federal Reserve to correct the effect of errors made in processing of checks or other transactions on an institution's reserve position. These technical adjustments are used when determining a depository institution's required reserve balance and clearing balance for the payment of interest and therefore remain useful.[11] Accordingly, the Board is adopting the current language in § 204.10(a) as part of its final rule.

7. Section 204.10(b) Rate

The Board received no comments on the initial rate of interest on required reserve balances. The Board received two comments on the formula for the rate on excess balances. One commenter stated that the initial rate paid on excess balances (the lowest targeted federal funds rate during the reserve maintenance period less 75 basis points) and the rate after the first adjustment to the formula for calculating the interest rate on excess balances (the lowest targeted federal funds rate during the reserve maintenance period less 35 basis points) were too high in a ''dysfunctional market.'' The Board received one comment that reducing the 75-basis point difference between the rate of interest on excess balances and the targeted federal funds rate over the reserve maintenance period exacerbated the ''untimely implementation'' of the payment of interest on balances at Reserve Banks, but that commenter did not propose an alternative rate. One commenter suggested that the Board set the rate of interest on excess balances at the effective federal funds rate, rather than the targeted federal funds rate, so as to avoid artificially drawing funds to the Reserve Banks.

The Board has continued to evaluate the rate of interest on required reserve and excess balances and is not at this time changing the rates from the current amount of ¼ percent. Flexibility to make adjustments to the rates of interest in response to evolving market conditions continues to be necessary. Accordingly, the Board is retaining the current language of § 204.10(b)(3), which provides that the Board may revise from time to time the rates for payment of interest on balances at Reserve Banks.

8. Section 204.10(c) Pass-Through Balances

a. Background

As noted above, the 2006 Act authorized Reserve Banks to pay earnings on balances maintained at a Reserve Bank by or on behalf of certain depository institutions. The 2006 Act also authorized the Board to prescribe regulations concerning ''the responsibilities of depository institutions, Federal Home Loan Banks, and the National Credit Union Administration Central Liquidity Facility with respect to crediting and distribution of earnings attributable to balance maintained * * * in a Federal Reserve bank by any such entity on behalf of depository institutions.'' [12] Thus, the 2006 Act contemplated that certain institutions (such as Federal Home Loan Banks) could hold balances on behalf of depository institutions that were eligible to earn interest on those balances, even if the correspondent institutions were not themselves eligible to receive earnings on their own balances.

b. Correspondents That Are Eligible Institutions

Under the interim final rule, Reserve Banks paid interest on required reserve balances maintained on behalf of an eligible institution. Where a pass-through correspondent is an eligible institution, the required reserve balances in the correspondent's account may include those balances held by the correspondent to meet its own reserve requirement (if any), as well as those balances held to meet its respondents' reserve requirements. The interim final rule also permitted, but did not require, a pass-through correspondent to pass back to its respondent interest paid on behalf of that respondent's required reserve balances.

The Board requested comment on whether it should permit or require a correspondent to pass back interest to its respondents. In response, the Board received four comments. Two commenters supported permissive passing back of interest in order to preserve the parties' flexibility in negotiating contractual relationships. One commenter supported requiring passing back of interest, stating that permitting correspondents to retain the interest would be unfair. This commenter also suggested delaying the effective date of a pass-back requirement to two years after adoption of a final rule in order to provide correspondents with an opportunity ''to modify accounting systems and business models.'' Finally, one commenter stated that paying interest on pass-through balances as a lump-sum was a poor service because doing so places responsibility on the correspondent to calculate the amount of interest to be passed back to each respondent.

Under the final rule, correspondents that are eligible institutions will continue to be permitted, but not required, to pass back to their respondents interest earned on balances held on behalf of the respondents. As these correspondents are eligible to earn interest on their own account balances, permitting them to make arrangements with their respondents with respect to passing back of interest is consistent with the statutory provisions. In addition, permissive, but not required, passing back of interest avoids interfering with existing correspondent-respondent arrangements. Correspondents structure their

[11] More detailed information about the ''as-of adjustment'' process is available in the *Reserve Maintenance Manual*, available at *http://www.frbservices.org/files/regulations/pdf/rmm.pdf*.

[12] Federal Reserve Act § 19(b)(12)(B)(iii), 12 U.S.C. 461(b)(12)(B)(iii).

relationships with respondents in a variety of ways, depending on factors such as services provided or balances held. Respondents may adjust the level of balances held with a correspondent in response to changes in the rates received on those balances, as well as in response to other factors. Respondents that are not satisfied with their existing correspondent arrangements may take steps to renegotiate the terms of the relationship or enter into a relationship with a different correspondent.

Additionally, permitting, but not requiring, the passing back of interest to respondents is consistent with the treatment of reserve deficiency charges in Regulation D.[13] Reserve Banks assess deficiency charges to the account of the pass-through correspondent for any deficiency in its account balances, even if the deficiency is attributable to the correspondent's respondent. Then, the pass-through correspondent determines whether to assess a deficiency charge on its respondent, or whether to make adjustments to other aspects of the correspondent-respondent relationship in response to the deficiency. Accordingly, the Board has determined to continue permitting, but not requiring, correspondents that are eligible institutions to pass back to respondents earnings on both required reserve balances and excess balances held on behalf of the respondents.

c. Correspondents That Are Not Eligible Institutions

Under the interim final rule, Reserve Banks paid interest on required reserve balances maintained on behalf of an eligible institution, even if the pass-through correspondent was not an eligible institution. Where a pass-though correspondent is not an eligible institution, the required reserve balances held in the correspondent's account are solely those balances held to meet its respondent's reserve requirements.

The interim final rule also provided that Reserve Banks pay interest on excess balances maintained on behalf of an eligible institution, even if the pass-through correspondent is not an eligible institution but has excess balances in its account. Because Reserve Banks cannot determine whether all or part of the excess balances in a pass-through correspondent's account are held on behalf of respondents without imposing additional reporting or accounting requirements, the interim final rule deemed all of the excess balances held in an account of a correspondent that is not an eligible institution to be held on behalf of the correspondent's respondents.

The Board requested comment on alternative methods for determining whether all or part of the excess balances in a correspondent's account at a Reserve Bank are held on behalf of the respondent where the correspondent is not an eligible institution. The Board received one comment in support of deeming all excess balances held in an account of a pass-through correspondent that is not an eligible institution to be held on behalf of the correspondent's respondents. This commenter stated that deeming the excess balances to be held on behalf of the respondents would avoid imposing ''unnecessarily burdensome'' reporting requirements on correspondents and provide flexibility in structuring correspondent-respondent relationships. One commenter, however, indicated that additional reporting requirements would not be burdensome because correspondents already maintain records of excess balances held on behalf of respondents.

Since the implementation of paying interest on balances at Reserve Banks, some correspondents that are not eligible institutions are holding extremely high excess balances relative to the total assets of their respondents, indicating that these balances may not be held on behalf of those respondents. In order to carry out the intent of the 2006 Act with respect to institutions that are and are not eligible to receive interest on balances held at Reserve Banks, the final rule will no longer deem any excess balance in the account of a correspondent institution that is not an eligible institution to be held on behalf of respondents. Thus, any excess balance in the account of a correspondent that is not an eligible institution will be attributable to the correspondent, and no earnings will be paid on the excess balance in that account. The respondents of a correspondent that is not an eligible institution may elect to participate in an excess balance account (discussed *infra*) in order to receive earnings on excess balances.

Required reserve balances held on behalf of respondents by correspondents that are not eligible institutions, however, will continue to receive interest, which will be posted to the correspondent's master account. As discussed *supra,* where a pass-through correspondent is not an eligible institution, the required reserve balances held in the correspondent's account will be solely those held to meet its respondent's reserve requirements. Further, because any excess balance held in the account of a correspondent that is not an eligible institution will not receive interest, any earnings received on balances in such an account will be attributable solely to the required reserve balances of the correspondent's respondents. Unlike the interim final rule, the final rule will require correspondents that are not eligible institutions to pass back to their respondents all interest credited to the correspondent's accounts. The correspondent is responsible for calculating the amount of interest apportioned to each of its respondents.

d. Exemption From Regulation Q

Under the interim final rule, passing back interest to respondents is not a payment of interest on a demand deposit for purposes of Regulation Q (12 CFR part 217). One commenter stated that by paying interest on ''transaction accounts,'' the Board has ''created an unfair playing field'' by not allowing other correspondent banks to do the same for the same types of accounts held with them. Another commenter expressed concern that requiring a correspondent to hold excess balances on its balance sheet negated the FDIC's insurance coverage of the respondent's demand deposit account by transforming the respondent's account from a non-interest-bearing transaction account to an interest-bearing transaction account.

The Board recognizes that, although Reserve Banks may pay interest on balances that are subject to immediate withdrawal, many private sector banks are prohibited by law from doing so.[14] The Board has long sought statutory amendments to eliminate the prohibition against interest on demand deposits. The 2006 Act, however, expressly authorizes the Board to prescribe regulations to allow pass-through correspondents to pass back interest to respondents. Congress, therefore, contemplated that pass-through correspondents could pass back part or all of the interest received in a correspondent's Reserve Bank account to its respondents, even though the payment of interest on demand deposit accounts is otherwise prohibited. Accordingly, the Board has specified in the final rule that when a pass-through correspondent passes back to its respondent any interest paid on balances held on behalf of the

[13] *See* 12 CFR 204.5(d)(4)(i) (formerly 12 CFR 204.3(i)(3)(ii)).

[14] For example, section 19(i) of the Act provides: ''[no] member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand * * *'' *See* Regulation Q (Prohibition Against Payment of Interest on Demand Deposits), which implements section 19(i) (12 CFR 217).

respondent, such a payment is not a payment of interest on a demand deposit for purposes of Regulation Q.[15] The Board received no other comments on this provision and is retaining the current language in the final rule, with the exception of one technical amendment for clarity.

II. Excess Balance Accounts

A. Background

1. Correspondent-Respondent Relationship

Since the implementation of the payment of interest on excess balances of eligible institutions, eligible institutions that are respondents of a pass-through correspondent may receive earnings on excess balances in two ways. First, the respondents of a pass-through correspondent may direct the correspondent to sell the respondent's excess funds in the federal funds market. Second, under the interim final rule adopted in October, the respondents may direct the correspondent to hold the respondent's excess funds as excess balances in the correspondent's account at a Reserve Bank. These two approaches have different implications for the correspondent's balance sheet and its leverage ratio for capital adequacy purposes. If a correspondent holds its respondents' excess balances in the correspondent's account at a Reserve Bank, the correspondent's account balance at the Reserve Bank increases. Accordingly, the correspondent has more assets on its balance sheet, resulting in a lower leverage ratio for capital adequacy purposes. In contrast, if the correspondent sells the funds in the federal funds market on the respondent's behalf, the balances are transferred to the entity purchasing them. This transaction is effected by a debit to the correspondent's account at a Reserve Bank and a credit to the purchaser's account at a Reserve Bank. All other things being equal, the correspondent's Reserve Bank account balance is lower. The correspondent has fewer assets on its balance sheet, and therefore, has a higher regulatory leverage ratio.

When the federal funds rate is below the rate the Reserve Banks pay on excess balances, respondents have an incentive to shift the investment of their excess funds away from sales of federal funds through their correspondents, and toward holding those funds as excess balances in accounts at the Reserve Banks. Although correspondents may hold those funds as excess balances at a Reserve Bank on behalf of the respondent, doing so could result, in some cases, in a significant reduction in a correspondent's regulatory leverage ratio for capital adequacy purposes. Alternatively, a respondent could open its own account at a Reserve Bank; doing so, however, could potentially disrupt part or all of the respondent's established relationship with its correspondent.

2. Comments Received on Paying Interest on Excess Balances Held by Correspondents on Behalf of Respondents

In response to its interim final rule that implemented payment of interest on balances at Reserve Banks, the Board received comments concerning the effects of paying interest on excess balances on correspondent-respondent relationships. Five commenters stated that paying interest on excess balances, in conjunction with unusual market conditions, was causing respondents to shift funds away from correspondents to the Reserve Banks; thus, disrupting correspondent-respondent relationships. Three commenters stated that respondents' increasing demands to have correspondents hold funds as excess balances (as opposed to selling the funds in the federal funds market) was not only decreasing the availability of federal funds, but was also requiring correspondents to maintain more capital to raise their leverage ratio for capital adequacy purposes. One commenter expressed concern that, without changes to the interim final rule, the long-term viability of correspondent-respondent relationships would be jeopardized.

The Board received five comments proposing solutions to mitigate the adverse effects on correspondent-respondent relationships of paying interest on excess balances. Four commenters proposed that the Board authorize new accounts for the purpose of holding excess balances that did not require correspondents to hold the respondents' excess balances on their balance sheets. One commenter suggested that the Reserve Banks purchase excess funds directly from correspondents at the rate of interest on excess balances.

B. Excess Balance Account Proposed Rule

In response to these concerns, the Board requested comment in January 2009 on a proposal to amend Regulation D to authorize the creation of excess balance accounts (''EBAs'') (74 FR 5628 (Jan. 30, 2009)). The proposal would authorize the establishment of EBAs for maintaining the excess balances of participating eligible institutions (''EBA Participants''). The EBA Participants would designate another institution to act as their agent (''EBA Agent'') for purposes of general account management, including transferring excess balances in and out of the EBA and apportioning the interest paid on excess balances. The Board proposed that the EBA Agent could not comingle its funds in the EBA. The excess balances in the EBA would represent a liability of the Reserve Bank solely to the EBA Participants. Neither the EBA Participants nor the EBA Agent could maintain required reserve or clearing balances in the EBA or use the EBA for general payment or other activities. The Board stated in the proposal that it would re-evaluate the continuing need for EBAs when more normal market functioning resumes.

C. General Comments and Analysis

In response to its request for comment on the EBA proposal, the Board received 61 comments, representing comments from 44 depository institutions, two financial holding companies, one Federal Home Loan Bank, five financial institution trade associations, and three individuals. Sixteen commenters supported the proposal in its entirety. Two of these commenters sought clarification on technical aspects of the proposed rule on EBAs. Several commenters supported EBAs in general, but suggested that EBA Participants be able to designate more than one institution to act as EBA Agent. One commenter found no significant value in the EBA proposed rule, citing high administrative costs and few benefits. One commenter raised concerns about the impact of EBAs on existing business models if balances are moved into Reserve Bank accounts. Two commenters encouraged the Board to evaluate the continuing need for EBAs when more normal market functioning resumes; one of these commenters suggested the Board seek public comment as part of its re-evaluation.

The Board has carefully considered the comments and has determined to authorize the establishment of EBAs, largely as described in the proposal. The Board believes that authorizing EBAs should reduce the potential for significant disruptions to long-standing correspondent-respondent relationships in the current market environment. Because the excess balances of EBA Participants in EBAs would be Reserve Banks' direct liabilities to EBA Participants, correspondents would not

[15] *See* 12 CFR 329.2 (Payment of interest) and 12 CFR 329.3 (Exception to prohibition on payment of interest) for implications to FDIC regulations regarding payment of interest.

show those balances on their balance sheets. Therefore, the adverse leverage ratio impact of correspondents of holding respondent excess balances in the correspondent's account would be mitigated. Further, participation in an EBA, either as a participant or agent, is voluntary. Thus, if an institution does not believe that an EBA will provide additional value, the institution does not have to participate in an EBA or act as an EBA Agent. As stated in the proposal, the Board will re-evaluate the continuing need for EBAs when more normal market functioning resumes.

D. Section-by-Section Analysis

1. Section 204.2(aa) Definition of Excess Balance Account

The Board proposed to define ''excess balance account'' as ''an account at a Reserve Bank pursuant to § 204.10(e) of this part that is established by one or more eligible institutions and in which only excess balances of the participating eligible institutions may at any time be maintained.'' The proposed rule explicitly excludes excess balance accounts from the definition of ''pass-through accounts.''

The Board received three comments seeking clarification as to whether each EBA Participant needed to open an EBA or whether the EBA Participants could designate an EBA Agent to open an EBA on behalf of the EBA Participants. To establish an EBA, eligible institutions that desire to become EBA Participants must designate one other institution to act as the EBA Agent for that EBA. EBA Participants will be required to execute EBA agreements with the Reserve Bank where the EBA Agent maintains its own master account (''Administrative Reserve Bank''). Similarly, the EBA Agent will be required to execute an EBA agreement with its Administrative Reserve Bank. In order to facilitate establishing EBAs and to reduce administrative burdens, EBA Participants will deliver their executed EBA agreement to their EBA Agent. The EBA Agent then will deliver the executed EBA agreements of all the EBA Participants for which it acts as EBA Agent to its Administrative Reserve Bank. The Board is adding language to the definition of ''excess balance account'' to clarify that eligible institutions establish an EBA through the EBA Agent. The Board is also making a technical amendment to the definition to reflect renumbering of sections elsewhere in Regulation D. The Board is also redesignating the definition as § 204.2(aa) (from § 204.10(d)(6) in the proposed rule) in connection with moving the definition into the general definition section of Regulation D.

2. Section 204.10(d)(1) Establishing an EBA

The proposed rule (at § 204.10(e)(1)) provided that a Reserve Bank may establish an excess balance account for eligible institutions. The proposed rule also provided that the excess balances in the EBA are the property of the eligible institutions that participate in the EBA and represent a liability of the Reserve Bank solely to the participating institution. The Board received no comments on this portion of the proposal.

The Board is deleting the phrase that states the excess balances are the property of the eligible institutions. This phrase is not necessary and its deletion does not change the substance of the provision, which continues to state that excess balances represent a liability of the Reserve Bank solely to the participating institutions. The Board is otherwise adopting the provision as proposed.

3. Section 204.10(d)(2) EBA Agent

a. General Account Management

The proposed rule on EBAs provided that the EBA Participants would authorize another institution, the EBA Agent, to act as agent to perform general account management, including transferring excess balances of EBA Participants into and out of the EBA. One commenter expressed concerns about the feasibility for the EBA Agent of passing back interest. Specifically, the commenter sought clarification as to whether an EBA Agent could distribute the earnings to the EBA Participants at a different rate than the Reserve Banks paid out the earnings, as using the same formula as the Reserve Banks would require significant programming efforts. One commenter requested that the Board delay the effective date of the rule 120 days after publication to provide sufficient time to adjust operating systems to accommodate the new EBA Agent services.

The EBA program contemplates that Reserve Banks will calculate interest on the aggregate balance in the EBA, rather than calculate the amount of interest attributable to each EBA Participant's balances in the EBA. The EBA Participants will be responsible for instructing the EBA Agent with respect to the disposition of the interest. For example, an EBA Participant and an EBA Agent may by agreement provide that all interest attributable to an EBA Participant should be paid to the EBA Participant, or may by agreement provide that the EBA Agent may retain part or all of the interest paid as part of the EBA Agent's compensation for providing EBA Agent services or other services for the EBA Participant. Thus, the EBA Agent is not required by regulation to utilize the same formula for the disposition of earnings to EBA Participants as the Reserve Banks use for calculating interest on the EBA's aggregate balance. Moreover, the Board anticipates that the Reserve Banks will establish terms and conditions such that each EBA Agent will manage only one EBA.[16] Because acting as an EBA Agent is voluntary, the Board does not believe it necessary to delay the effective date of the rule. The Board is making one additional technical amendment to the final rule to replace the proposed phrase ''agent of the eligible institutions'' with the phrase ''agent of the participating institutions.'' This amendment is intended to provide consistent usage of terms throughout the final rule and does not represent a substantive change to the provision.

b. Participation in One EBA

The proposed rule provided that the EBA Participants would authorize another institution to act as its EBA Agent with respect to an EBA. The proposed rule, however, did not specify whether an EBA Participant could participate in more than one EBA. One commenter recommended removing the requirement that an EBA Participant designate only one institution as its EBA Agent, while not specifically suggesting that an EBA Participant be able to designate more than one institution as EBA Agent or to participate in more than one EBA. This commenter stated that requiring an EBA Participant to designate only one EBA Agent was unnecessary as most respondents ''do not participate in multiple correspondent agency programs.'' Some commenters, however, suggested that the final rule should permit EBA Participants to participate in more than one EBA.[17] These commenters stated that respondents currently use more than one correspondent institution for selling funds in the Federal funds market, among other services, in order to diversify credit risk, obtain better

[16] An EBA Agent that wishes to segregate different types of respondents from one another can set up subaccounts for the EBA.

[17] Because the proposed rule on EBAs limits EBA Participants to designating one institution as EBA Agent for the EBA, an EBA Participant that wished to designate multiple institutions as EBA Agent would need to participate in multiple EBAs to do so.

rates, and for liquidity contingency planning purposes.

While the Board recognizes that certain respondents may wish to maintain relationships with more than one correspondent for various purposes, the Board believes that permitting each eligible institution to participate in only one EBA is appropriate. Specifically, multiple EBAs are not necessary in order to diversify credit risk, as with federal funds sales, because there is no credit risk associated with maintaining a balance in an account at a Reserve Bank. Similarly, the need to use multiple agents to manage liquidity risk does not exist in the context of EBAs, because excess balances in an EBA are highly liquid. Moreover, any potential disruption to existing correspondent-respondent relationships is lessened by the fact that each EBA Participant can choose each day whether to sell funds in the federal funds market (through any number of correspondent institutions), to place the funds at a Federal Reserve Bank through their (single) EBA Agent, or to select a combination of the two. Accordingly, EBA Participants may maintain relationships with more than one correspondent notwithstanding the fact that an EBA Participant participates in only one EBA at a Reserve Bank.

Restricting eligible institutions to participating in only one EBA is consistent with Regulation D's treatment of correspondent-respondent relationships in pass-through arrangements, where each respondent uses a single correspondent to pass through the respondent's required reserve balances.[18] This single-correspondent structure also reflects the current Federal Reserve policy that permits each chartered depository institution to maintain a single master account at one Reserve Bank. Such a structure provides streamlined control and a single coordination point for the Reserve Banks to manage the debtor-creditor relationship with each depository institution. This structure also helps minimize the risk of loss to the Federal Reserve in the event the account holder becomes insolvent. Authorizing the establishment of EBAs loosens such control and coordination to the extent that it potentially permits EBA Participants to have accounts at two Reserve Banks: one account in the district where the EBA Participant itself is located, and an EBA in the district where the EBA Agent is located. Given that offering EBAs is motivated largely by unusual financial market conditions in which the effective federal funds rate has been below the rate on excess balances, and given that EBAs are being offered on a temporary basis, staff believes that permitting EBA Participants to potentially have an EBA and a master account at different Reserve Banks is appropriate to ensure that respondents are able to hold excess balances within their existing correspondent-respondent relationships. A more significant expansion, however, involving multiple account relationships by permitting eligible institutions to participate in more than one EBA, introduces further complexity into the oversight and coordination for the Reserve Banks for managing the debtor-creditor relationship without a substantial justification for doing so.

The Board believes that permitting eligible institutions to participate in one EBA, but not more, at this time benefits both correspondent and respondent by allowing respondents to place excess balances at a Reserve Bank in a way that does not increase the leverage ratio for the correspondent, therefore mitigating disruption to correspondent-respondent relationships. This approach also does not significantly increase the complexity for the Reserve Banks in managing these accounts and the associated debtor-credit relationships. In addition, the significance of the demand for participation in multiple EBAs is not clear from the comments received, because only a few commenters expressed an interest in multiple EBAs. Accordingly, the Board expects that, absent a compelling reason to do otherwise at this time, the Reserve Banks will set terms and conditions with respect to EBAs that will limit each eligible institution to participation in one EBA.

c. EBA Agent Must Maintain Separate Master Account

The proposed rule also provided that the EBA Agent ''must maintain its own separate account at a Reserve Bank'' and that the EBA Agent may not commingle its own funds in the EBA. The proposal indicated that the EBA would be established at the Reserve Bank where the EBA Agent maintains its own master account, although the proposed regulatory text did not reflect this. Accordingly, the final rule adds language to the regulatory text to specify that the EBA must be held at the Reserve Bank where the EBA Agent maintains its master account.

d. Record-Keeping

The supplementary information to the proposed rule stated that the EBA Agent would be responsible for maintaining records adequate to demonstrate the level of excess balances in the EBA of each EBA Participant. The Board received five comments regarding record-keeping requirements for the EBA Agent. One commenter suggested the Board clarify the record-keeping requirements of an EBA Agent with respect to the EBA. Three commenters stated that EBA Agents should be responsible for maintaining adequate records that could demonstrate the level of excess balances in the EBA of each EBA Participant. Additionally, one commenter indicated that maintaining such records would not be difficult for EBA Agents because correspondents maintain daily, detailed records of respondents' ''agency'' funds. Because the informational needs of each Reserve Bank with respect to each EBA may vary, the Board has not included such specifications in the final rule. Rather, the Board believes that setting forth the EBA Agent's record-keeping responsibilities is more appropriately done through account agreements with the Reserve Banks or through account terms and conditions.

4. Section 204.10(d)(3) Balances Maintained in EBA

The proposed rule provided that, at any given time, only excess balances of an eligible institution may be maintained in an EBA. The proposed rule also provided that balances maintained in an EBA would not satisfy any institution's reserve balance requirement or contractual clearing balance. The Board received two comments on this provision, both seeking clarification on how EBA Participants should classify balances held in an EBA.

Balances held in an EBA by an EBA Participant represent a liability of the Reserve Bank to the EBA Participants and not to the EBA Agent. Therefore, for reporting and accounting purposes, an EBA Participant should treat balances held in an EBA as balances held at a Reserve Bank and should report such balances as ''balances due from a Federal Reserve Bank'' for purposes of FR 2900 deposit reporting.[19] The Board received no other comments on this provision and is adopting the proposed provision, with minor editorial revisions, redesignated as § 204.10(d)(3).

5. Section 204.10(d)(4) Restrictions on Use of EBA

The proposed rule provided that neither EBA Participants nor the EBA Agent may use the EBA for general

[18] 12 CFR 204.5(d)(1) (formerly 12 CFR 204.3(i)(1)).

[19] See Instructions for Form FR 2900 (Sep. 2003) at p. 39, no. 1 (*http://www.federalreserve.gov/reportforms/forms/FR_2900cb20071001_i.pdf*).

payments or other activities. The Board received one comment on this provision, seeking clarification on restrictions as to when the EBA Agent would be required or allowed to move excess balances into the account.

The final rule imposes no regulatory restrictions on when an EBA Agent may or must transfer funds into and out of an EBA. The EBA Agent, however, must manage the EBA such that the account does not incur either intra-day or overnight overdrafts. The Board is adopting this provision as proposed, redesignated as § 204.10(d)(4).

6. Section 204.10(d)(5) Payment of Interest on Balances in EBA

The Board proposed that interest would be paid on excess balances in accordance with section 204.10(b)(2). The Board received no comments on this provision. In light of the amendments to Regulation D since the proposed rule on EBAs setting forth the Board's authority to provide that interest on excess balances be paid at a different rate than the rate set forth in section 204.10(b)(2), the final rule will reflect that authority set forth in current section 204.10(b)(3).

7. Section 204.10(d)(6) Additional Terms and Conditions

The proposed rule on EBAs was silent about the authority of Reserve Banks to establish additional terms and conditions with respect to the operation of an EBA. The Board, however, is adding new § 204.10(d)(6) to the final rule to clarify that the Reserve Banks have the authority to set additional terms and conditions with respect to the operation of EBAs, to the extent that such terms and conditions are consistent with provisions in Regulation D. Such terms and conditions include, but are not limited to, terms of service, fees for services, conditions under which an institution may act as agent for an EBA, restrictions on the EBA Agent's account management, penalties for noncompliance with the terms of Regulation D's provisions on EBAs or with the additional terms and conditions established by the Reserve Banks, and termination of EBAs. The provision provides examples of the operational aspects for which the Reserve Banks may set forth additional terms and conditions, but indicates that those categories of additional terms and conditions are illustrative.

III. Clearing Balance Policy Adjustments

At the time it adopted the interim final rule, the Board made adjustments to its clearing balance policy so as to discontinue practices related to reserve requirements that were no longer necessary in light of the amendments to Regulation D. First, the Board eliminated the ''imputed reserve requirement adjustment'' to earnings credits because reserves on respondents' balances would earn interest at the rate on required reserve balances. Second, the Board eliminated the ''marginal reserve requirement adjustment'' because respondents would be indifferent between holding balances at a Reserve Bank (and earning the rate on required reserves balances) and maintaining the balance at a private-sector correspondent (taking a due from deduction, and investing those funds). Finally, the Board eliminated the imputed reserve requirement adjustment and the adjustment for cash items in the process of collection that are applied when measuring float costs to be recovered by Reserve Bank priced services. The Board received no comments on its adjustments to the clearing balance policy and is retaining that policy as previously adopted.

IV. Transitional Adjustments in Mergers

The interim final rule eliminated the provisions in Regulation D associated with merger-related adjustments to reserve requirements, applicable to mergers completed on or after October 9, 2008. The provisions were set forth in § 204.4. The Board received no comments on this issue and is not reinstating the provisions.

V. Solicitation of Comments Regarding Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 1408) requires the Board to use ''plain language'' in all final rules. The Board has sought to present this final rule in a simple and straightforward manner. The Board received no comments on whether the interim final rule and proposed rule were clearly stated and effectively organized or on how the Board might make the text easier to understand.

VI. Regulatory Flexibility Act

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

Pursuant to section 605(b), the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule implements a program for paying interest on certain balances held by eligible institutions at the Federal Reserve Banks and will benefit small institutions that receive such interest. Additionally, the rule permits, but does not require, institutions to establish EBAs at Reserve Banks. The impact on institutions choosing to establish EBAs at Reserve Banks would be positive, not adverse, because EBA Participants would be able to earn the rate payable on excess balances in a debtor-creditor relationship directly with a Reserve Bank without disrupting established correspondent-respondent relationships. Likewise, the impact would be positive, not adverse, on institutions that choose to establish EBAs but that are not currently in correspondent-respondent relationships, as such institutions would be expected to establish EBAs only to the extent that EBA Agents and EBA Participants found it mutually beneficial to do so. There are no new reporting, recordkeeping, or other compliance requirements associated with this rule.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

Authority and Issuance

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

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

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

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

■ 2. Amend § 204.2 by adding paragraphs (v), (y), (z), (aa), (bb), and (cc) to read as follows:

§ 204.2 Definitions.

* * * * *

(v) *Clearing balance* means the average balance held in an account at a Federal Reserve Bank by an institution over a reserve maintenance period to satisfy its contractual clearing balance with a Reserve Bank.

* * * * *

(y) *Eligible institution* means—

(1) Any depository institution as described in § 204.1(c) of this part;

(2) Any trust company;

(3) Any corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 *et seq.*); and

(4) Any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978, 12 U.S.C. 3101(b)).

(z) *Excess balance* means the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period that exceeds the sum of the required reserve balance and any clearing balance.

(aa) *Excess balance account* means an account at a Reserve Bank pursuant to § 204.10(d) of this part that is established by one or more eligible institutions through an agent and in which only excess balances of the participating eligible institutions may at any time be maintained. An excess balance account is not a ''pass-through account'' for purposes of this part.

(bb) *Required reserve balance* means the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period to satisfy the reserve requirements of this part.

(cc) *Targeted federal funds rate* means the federal funds rate established from time to time by the Federal Open Market Committee.

■ 3. Revise § 204.10 to read as follows:

§ 204.10 Payment of interest on balances.

(a) *Payment of interest.* The Federal Reserve Banks shall pay interest on balances maintained at Federal Reserve Banks by or on behalf of an eligible institution as provided in this section and under such other terms and conditions as the Board may prescribe.

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

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

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

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

(c) *Pass-through balances.* A pass-through correspondent that is an eligible institution may pass back to its respondent interest paid on balances held on behalf of that respondent. In the case of balances held by a pass-through correspondent that is not an eligible institution, a Reserve Bank shall pay interest only on the required reserve balances held on behalf of one or more respondents, and the correspondent shall pass back to its respondents interest paid on balances in the correspondent's account. Any passing back of interest by a correspondent to a respondent under this subsection is not a payment of interest on a demand deposit for purposes of Part 217 of this chapter (Regulation Q).

(d) *Excess balance accounts.* (1) A Reserve Bank may establish an excess balance account for eligible institutions under the provisions of this paragraph (d). Notwithstanding any other provisions of this part, the excess balances of eligible institutions in an excess balance account represent a liability of the Reserve Bank solely to those participating eligible institutions.

(2) The participating eligible institutions in an excess balance account shall authorize another institution to act as agent of the participating institutions for purposes of general account management, including but not limited to transferring the excess balances of participating institutions in and out of the excess balance account. An excess balance account must be established at the Reserve Bank where the agent maintains its master account, unless otherwise determined by the Board. The agent may not commingle its own funds in the excess balance account.

(3) No required reserve balances or clearing balances may be maintained at any time in an excess balance account, and balances maintained in an excess balance account will not satisfy any institution's reserve balance requirement or contractual clearing balance.

(4) An excess balance account must be used exclusively for the purpose of maintaining the excess balances of participants and may not be used for general payments or other activities.

(5) Interest shall be paid on excess balances of eligible institutions maintained in an excess balance account in accordance with paragraph (b)(2) or (b)(3) of this section.

(6) A Reserve Bank may establish additional terms and conditions consistent with this part with respect to the operation of an excess balance account, including, but not limited to, terms of and fees for services, conditions under which an institution may act as agent for an account, restrictions on the agent with respect to account management, penalties for noncompliance with this section or any terms and conditions, and account termination.

By order of the Board of Governors of the Federal Reserve System, May 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12432 Filed 5–28–09; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 204 and 209

[Regulations D and I; Docket No. R–1307]

Reserve Requirements of Depository Institutions; Issue and Cancellation of Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D (Reserve Requirements of Depository Institutions) and Regulation I (Issue and Cancellation of Federal Reserve Bank Capital Stock) to make two substantive changes and other clarifying amendments. The first substantive amendment conforms Regulation D to Section 603 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109–351, Oct. 13, 2006) by authorizing member banks of the Federal Reserve System to enter into pass-through arrangements. Previously, member banks were statutorily prohibited from passing required reserve balances through a correspondent institution. The second substantive amendment eliminates the provision in Regulation D's definition of ''savings deposit'' that limits certain kinds of transfers from savings deposits to not more than three per month. As a result, all transfers and withdrawals from a savings deposit that are subject to a monthly limit will be subject to the same limit of not more than six per month. The remaining clarifying amendments reorganize the provisions relating to deposit reporting and the calculation and maintenance of required reserves, clarify the definition of ''vault cash,'' and make other minor editorial changes.

DATES: This final rule is effective July 2, 2009.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202/

452–3565), or Dena L. Milligan, Attorney (202/452–3900), Legal Division, Seth Carpenter, Deputy Associate Director (202/452–2385), or Margaret Gillis DeBoer, Section Chief (202/452–3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (the ''Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions. Currently, reserve requirement ratios for ''transaction accounts'' are graduated between three and ten percent. Reserve requirement ratios for ''nonpersonal time deposits'' and ''Eurocurrency liabilities'' are currently zero percent. Although section 19 expressly defines accounts with certain transfer characteristics as ''transaction accounts,'' section 19 authorizes the Board ''to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.'' [1] Section 19 also authorizes the Board to define, by regulation, the terms used in the section. The Board implements the provisions of section 19 through Regulation D.

Section 11(a)(2) of the Act authorizes the Board to require any depository institution ''to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates.'' [2] These provisions are specifically implemented in the computation and maintenance provisions of Regulation D (12 CFR 204.3).

Section 19(c)(1) of the Act provides that a depository institution's required reserves shall be either in the form of a balance maintained for such purposes by such a depository institution in an account at a Federal Reserve Bank or in the form of vault cash. Prior to 2006, section 19(c)(1)(B) of the Act provided that non-member banks could maintain required reserves in an account at a depository institution that maintained required reserve balances at a Federal Reserve Bank, known as a ''pass-through account.'' The Financial Services Regulatory Relief Act of 2006 (Pub. L. 109–351, Oct. 13, 2006), amended section 19(c)(1)(B) of the Act to remove the language restricting pass-through arrangements to non-member banks. Accordingly, the Act now permits all depository institutions to maintain required reserves in a pass-through account with a correspondent depository institution.

II. Request for Public Comment and Summary of Comments Received

The Board requested public comment on proposed changes to Regulations D and I on February 7, 2008 (73 FR 8009 (Feb. 12, 2008)). In response, the Board received 27 comments on the proposal, consisting of comments from nine depository institutions, two financial holding companies on behalf of their depository institution subsidiaries, seven individuals, seven financial institution trade associations, one law firm, and one association of depository institutions. Of these, three commenters supported the proposal in its entirety, while the majority of the other comments received concerned (A) the proposed amendment to the definition of ''savings deposit'' describing the monthly numeric limits imposed on certain ''convenient'' types of transfers and withdrawals from savings deposits or (B) the proposed amendments to the definitions of ''time deposit'' and ''vault cash.'' Other comments addressed reserve requirements generally and other technical aspects of the proposal.

III. Section-by-Section Analysis of Proposal and Comments

A. Section 204.2(c) Definition of Time Deposit

(1) Background of Proposed Amendment

The current definition of ''time deposit'' in Regulation D provides that an early withdrawal penalty must be charged on any amount withdrawn from a time deposit ''from within six days after the date of deposit.'' [3] The definition contemplates that an early withdrawal might be an early withdrawal of the entire deposit amount or of a partial withdrawal, that is, a withdrawal of some amount that is not the entire deposit amount. In either case, if part or all of the time deposit is withdrawn within six days after the date of the initial deposit, the specified early withdrawal penalty must be imposed on the amount so withdrawn. The current definition further states that ''[a] time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal.'' This language has been subject to numerous inquiries as to the meaning of the terms ''additional'' and ''early.''

(2) Proposed Amendment and Comments

The Board proposed to amend the definition of ''time deposit'' to remove the references to ''early'' and ''additional'' in the second sentence of the definition and to clarify that ''early'' withdrawals include withdrawals within six days after deposit as well as withdrawals within six days of the last withdrawal. The Board received two comments on the proposed amendments to the definition of ''time deposit.'' Both comments expressed concern that the proposed amendments, if adopted, would have the effect of precluding certain depository institutions from continuing to avail themselves of the deposit type referred to as a ''time deposit open account,'' or ''TDOA.''

From as early as 1915, ''time deposit open account'' was a separately defined term within the general category of ''time deposit'' in Regulation D.[4] Board interpretations in later decades described bank trust departments' use of TDOAs for disposition of certain commingled uninvested trust and agency funds awaiting disbursement or further investment.[5] ''Time deposit open account,'' however, ceased being a separately defined term under the general definition of ''time deposit'' in 1980. Further, the Board interpretations discussing use of TDOAs by trust departments for trust and agency funds were rescinded in 1987 as having been incorporated into section 204.2(c)(1)(i)(C) of Regulation D.[6] Nevertheless, the Board referred to TDOAs by name in subsequent rulemakings as continuing to be viable, at least when used other than as a method of evading reserve requirements.[7]

[1] Section 19(b)(1)(F) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(F).

[2] 12 U.S.C. 248(a).

[3] 12 CFR 204.2(c)(1).

[4] Federal Reserve Board, Circular No. 6 (Series of 1915) (Jan. 15, 1915).

[5] Board Interpretation, 1950 Fed. Res. Bull. 44; Board Interpretation, 1959 Fed. Res. Bull. 1475.

[6] 52 FR 47689, 47691 (Dec. 16, 1987). Section 204.2(c)(1)(i)(C) states that ''[t]ime deposit includes funds * * * payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal * * *''

[7] 57 FR 38417, 38423–24 (Aug. 25, 1992) (declining to adopt ''LIFO'' rule for withdrawals from time deposits, in part because of potential

(3) Comment Analysis and Final Rule

The Board believes that adopting the proposed amendments would have no effect on the continued use of TDOAs in *bona fide* arrangements by trust departments for trust and agency funds. The final amendments, however, do not adopt revisions to the definition of ''time deposit'' that were proposed in the Board's request for public comment because the only two comments received on the proposed revisions indicated that the proposed revisions would create more confusion than clarity.

B. Section 204.2(d) Transfers From Savings Deposits

(1) Background of Proposed Amendment

The Board's criteria for distinguishing between ''transaction accounts'' and ''savings deposits'' in Regulation D are based on the ease with which the depositor may make transfers (payments to third parties) or withdrawals (payments directly to the depositor) from the account. Generally, the more convenient making withdrawals or transfers from an account is, the more likely the account holder will use the account for making payments or transfers to third parties rather than for holding savings. Accordingly, Regulation D limits the number of certain convenient kinds of transfers or withdrawals that an account holder may make in a single month from an account if that account is to be classified as a ''savings deposit.'' [8] ''Convenient'' transfers or withdrawals for this purpose include preauthorized or automatic transfers (such as overdraft protection transfers or arranging to have bill payments deducted directly from the depositor's savings account), telephonic transfers (made by the depositor telephoning or sending a fax or online instruction to the bank and instructing the transfer to be made), and transfers by check, debit card, or similar order payable to third parties.

Regulation D currently limits the number of ''convenient'' transfers and withdrawals from savings deposits to not more than six per month. Within this overall limit of six, not more than three transfers or withdrawals may be made by check, debit card, or similar order made by the depositor and payable to third parties (the ''three'' sublimit). Regulation D does not limit less convenient transfers and withdrawals from savings deposits. For example, an account holder may make transfers or withdrawals ''by mail, messenger, automated teller machine, or in person or * * * made by telephone (via check mailed to the depositor)'' from savings deposits without numerical limit.

(2) Proposed Amendment and Comments

The Board proposed to amend Regulation D's definition of ''savings deposit'' to eliminate the ''three'' sublimit that applies to checks and drafts and simply limit all ''convenient'' transfers to not more than six per month. Fourteen commenters supported eliminating the ''three'' sublimit, eight commenters favored doing away with numeric transfer limits entirely, and five commenters favored raising the monthly numeric limit to some number higher than six. One commenter proposed allowing depository institutions to set their own monthly numeric limits on convenient transfers and withdrawals. One commenter opposed both raising the monthly numeric limit to a higher number and making all kinds of transfers and withdrawals unlimited in number. One commenter stated that eliminating only the ''three'' sublimit did not go far enough, but made no recommendations as to how the Board could improve the proposal to address that concern. Two commenters requested that, if the proposed amendment becomes final, then the Board should provide a sufficiently delayed effective date (either six months or one year) to allow depository institutions time to modify their systems and customer disclosures.

(3) Comment Analysis and Final Amendment

The Board has carefully considered the comments received and has adopted the amendment to the definition of ''savings deposit'' as proposed. The sublimit in the definition of ''money market deposit account'' began in 1982 with the enactment of the Garn-St Germain Depository Institutions Act and lapsed in 1986. The Board retained the distinction between transactions subject to the overall limit of six and those subject to the sublimit in Regulation D after the Depository Institutions Act lapsed in 1986. Technological advancements, however, have eliminated any rational basis for the distinction.

The Board has determined neither to raise the monthly numeric limit on convenient transfers to a number higher than six, nor to eliminate monthly numeric limits on all convenient transfers and withdrawals (including online) from savings deposits generally. Section 19 of the Act requires the Board to impose reserve requirements on transaction accounts and not on other types of accounts. Accordingly, the Board must maintain the capacity to distinguish between transaction accounts and savings deposits. The six-per-month limitation on certain convenient transfers and withdrawals has existed, in one form or another, since 1982. Such types of transfers and withdrawals appear to have become even more convenient since that time due to technological advances, such as the ability to make transfers online, and the increased availability of debit-card transfers at point-of-sale terminals and elsewhere. The greater the number of convenient transfers and withdrawals permitted per month from a ''savings deposit,'' the greater the difficulty in distinguishing such an account from a transaction account. Therefore, the Board has determined that the final rule will neither increase the number of convenient transfers and withdrawals permitted per month from a savings deposit, nor eliminate such numeric limits entirely (on either online transfers or all convenient transfers and withdrawals).

For similar reasons, the Board believes that it would not be appropriate to adopt a rule allowing depository institutions to set their own monthly numeric limits on convenient transfers and withdrawals that account holders may make from savings deposits. Allowing different limits at different depository institutions would erode any definitional distinction between ''transaction accounts'' and ''savings deposits.'' Even if some depository institutions were to choose relatively low numeric limits, there likely would be broad variation among depository institutions in the numeric limits selected, creating significant discrepancies between accounts classified as ''savings deposits.'' In addition, the Board believes that depository institutions would have cost-avoidance and competitive incentives to set numeric limits as high as possible while still being able to report such deposits as nonreservable ''savings deposits'' that may bear interest. The Board is obligated by statute to maintain some regulatory distinction between ''transaction accounts'' and ''savings deposits'' and to enforce such a distinction with consistency. Accordingly, the Board has determined not to adopt a final rule permitting

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negative impact on operation of TDOAs; interpretation prohibiting linked time deposit accounts at 12 CFR 204.134 limited to its terms and does not necessarily apply to TDOA types of accounts operated by trust departments).

[8] 12 CFR 204.2(d)(2) (definition of ''savings deposit'').

depository institutions to select their own numeric limits on convenient transfers and withdrawals from savings deposits.

The Board also believes that selecting a monthly numeric limit to apply to all types of transfers and withdrawals from ''savings deposits,'' including those types that are currently unlimited in number per month, would not be appropriate. The Act provides that a ''transaction account'' is one ''on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others.'' [9] As such, the statutory definition specifically contemplates the kinds of transfers and withdrawals that are, or are most likely to be, transfers and withdrawals ''for the purpose of making payments or transfers to third persons or others.'' In contrast, withdrawals made in person or at an ATM are generally payments directly to the depositor, even if the depositor may subsequently provide those same funds to a third person or use them for a payment. Accordingly, the Board has determined that the final rule not impose numeric limits on all types of transfers and withdrawals that may be made from savings deposits, including those that are currently unlimited.

Finally, the Board believes that delaying the effective date for the final rule eliminating the ''three'' sublimit from the definition of ''savings deposit'' is unnecessary because the final rule is permissive. Under the final rule, depository institutions may classify accounts subject to the ''three'' sublimit as ''savings deposits'' as long as necessary. Accordingly, the Board has determined not to delay the final rule's effective date.

C. Section 204.2(k) ''Vault Cash'' Definition

(1) Background of Proposed Amendment

From 1917 to 1959, the Act permitted member banks to satisfy reserve requirements solely with balances in their accounts at Federal Reserve Banks. In 1959, Congress amended section 19 of the Act to provide that the Board, ''under such regulations as it may prescribe, may permit member banks to count all or part of their currency and coin as reserves required under this section.'' [10] The history of the 1959 legislation recognized that currency and coin in a member bank's vault and a balance in a member bank's account at a Federal Reserve Bank were ''interchangeable'' as liabilities of the Reserve Banks.[11] For operational reasons, however, ''country banks'' generally found it necessary to hold more currency and coin in their vaults than did ''reserve city banks'' or ''central reserve city banks.'' [12]

In 1970, the Board issued an interpretation of Regulation D relating to the eligibility of currency or coin held principally for numismatic value to satisfy member bank reserve requirements.[13] The Board specified in the 1970 interpretation that in order for a member bank to count currency or coin towards reserve requirements, the member bank must have ''the full and unrestricted right to use [such currency or coin] at any time to meet depositors' claims. * * *'' [14] The 1970 interpretation also specified that a bank does not have such a ''full and unrestricted right'' if the bank is prevented, legally or practically, * * * from using the currency or coin at any time to meet customer's demands.'' [15]

The 1980 amendments to Regulation D, which implemented the Monetary Control Act of 1980, introduced ''vault cash'' as a defined term. The 1980 amendments defined ''vault cash'' to mean ''currency and coin owned and held by a depository institution that may, at any time, be used to satisfy depositors' claims,'' incorporating into the new definition the 1970 interpretation's principles of bank ownership and availability at any time to satisfy depositors' claims. Subsequent Board guidance and staff opinions provided additional clarification of these requirements, including clarifying what vault cash is ''owned and held'' by the depository institution claiming it and the circumstances under which vault cash is ''immediately available.''

(2) Proposed Amendment and Comments

The Board proposed amending the definition of ''vault cash'' to incorporate the substance of prior written staff guidance as to when currency and coin that the depository institution does not hold at its physical location may be considered ''vault cash.'' [16] Specifically, the Board proposed dividing the definition of ''vault cash'' into two subsections: one that addresses vault cash ''held at a physical location of the depository institution * * * from which the institution's depositors may make cash withdrawals,'' and the other that addresses vault cash ''held at an alternate physical location.'' The amendments proposed by the Board expanded primarily the second proposed subsection to incorporate prior guidance.

(3) Comment Analysis and Final Amendment

The Board received two comments on the proposed amendments to the definition of ''vault cash.'' One commenter expressed support for the proposed amendments, and one commenter opposed the proposed amendments. The commenter opposing the amendments specifically opposed certain provisions relating to when vault cash at alternate physical locations may be considered to be ''immediately available,'' namely, that (1) the depository institution claiming the currency and coin as ''vault cash'' must receive it by 4 p.m. on the same day if requested by 10 a.m., and that (2) the depository institution must have a written contract in place for the delivery of the currency and coin claimed as ''vault cash.'' This commenter stated that 4 p.m. should not be selected as a cut-off hour because some depository institutions conduct business after 4 p.m., and because customers can usually obtain cash through an ATM or at POS (point of sale) terminals after 4 p.m. The commenter proposed an amendment that would require the currency and coin to be received on the same calendar day that it is requested. The commenter also stated that requiring written contractual arrangements for delivery of currency and coin claimed as ''vault cash'' imposes unnecessary costs on depository institutions because contractual agreements ''will likely never be used'' and because updating the agreements as offices are opened and closed would be expensive. The commenter proposed ''leav[ing] the particular details of the arrangement up to the institution.''

The Board believes that the selection of 4 p.m. as a cut-off hour for characterizing currency and coin as ''vault cash'' under Regulation D is appropriate. The Board believes that the rationale provided for an alternate ''same calendar day'' rule would not justify such a significant departure from the consistent position taken in numerous Board staff opinions over the years on the issue. Furthermore, such a

[9] 12 U.S.C. 461(b).

[10] The Act of July 28, 1959 (73 Stat. 263).

[11] S. Rep. No. 86–195, at 3 (1959); H. Rep. No. 86–403, at 3 (1959).

[12] *Id.*

[13] Former 12 CFR 204.116 (1979).

[14] *Id.*

[15] *Id.*

[16] *See, e.g.* FRRS ¶ 2–307.2 (rented vault); Staff Opinion of Aug. 9, 1982 (ATMs).

rule would remove any nexus between the characterization of currency and coin as ''vault cash'' and having such currency and coin ''immediately available,'' because any such currency and coin received after a closing hour (no matter how late) would not be available to a customer until the next business day. While customers may be able, as a practical matter, to obtain cash from ATMs and from POS terminals at various hours, not all such cash is sought to be characterized as ''vault cash'' for Regulation D purposes: the 4 p.m. requirement would apply only to currency and coin that an institution counts towards satisfying its reserve requirement.

The Board also believes that the rationale provided for eliminating the requirement for written contractual arrangements to be in place for ''vault cash'' does not justify changing the long-standing position on this issue. As with the 4 p.m. cut-off, the requirement for written contractual arrangements in this context is the position the Board has consistently taken over the years in staff opinions. Moreover, the Board believes it would be difficult, if not impossible, for a depository institution to establish what currency and coin is physically subject to the retrieval plan without written delivery plan to that effect. Likewise, the Board believes that it would be difficult, if not impossible, for the depository institution to establish its ''full and unrestricted right'' to such currency and coin if it were subject only to an oral understanding for retrieval within the requisite time frame. Accordingly, the Board is adopting the ''vault cash'' amendments as proposed.

D. Section 204.2(l) Definition of ''Pass-through Account''

The Board proposed to amend the definition of ''pass-through account'' to eliminate the language restricting pass-through account arrangements to non-member banks in order to conform the definition to section 19(c)(1)(B) of the Act. The Board also proposed moving the provisions relating to pass-through accounts to paragraph (d) under proposed § 204.5, ''Maintenance of Required Reserves.'' The Board received five comments in support of the proposed amendments, and is adopting them as proposed.

E. Section 204.2(w) Definition of ''Clearing Balance Allowance''

The Board proposed (1) adding a new definition of ''clearing balance allowance'' to Regulation D to replace the undefined term ''required charge-free band'' used in provisions relating to carryovers of excess reserves and deficiencies in reserves and (2) moving the existing carryover provisions to a new paragraph (e) under proposed § 204.5, ''Maintenance of Required Reserves.'' The Board received no comments on these amendments. The Board is setting forth the definition of ''clearing balance allowance'' in new § 204.2(w), and moving the carryover provisions to § 204.5, as proposed.

F. Section 204.2(x) Definition of ''Contractual Clearing Balance''

The Board proposed adding a new definition of ''contractual clearing balance'' to Regulation D to replace the undefined term ''required clearing balance.'' The Board proposed to define ''contractual clearing balance'' as ''the amount that a depository institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to balances the depository institution may hold to satisfy its required reserve balance.'' Further, the definition specified that ''[a] depository institution that has a required reserve balance of zero may still hold a contractual clearing balance.'' The Board received no comments on the proposed amendment.

The Board is revising the proposed definition of ''contractual clearing balance'' to provide consistency of usage of terms throughout Regulation D. When the Board proposed the new definition of ''contractual clearing balance,'' ''required reserve balance'' was an undefined term. New § 204.2(bb), however, defines ''required reserve balance'' as ''the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period to satisfy the reserve requirements of this part.'' [17] The proposed definition of ''contractual clearing balance'' contemplated the contractual clearing balance to be in addition to the amount an institution is required to maintain as a balance at a Reserve Bank in order to satisfy its reserve requirements, and not in addition to those balances actually held to satisfy such requirements. Accordingly, the final rule defines ''contractual clearing balance'' as ''an amount that an institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to any reserve balance requirement.'' For similar reasons, the Board is amending the last sentence in the definition of ''contractual clearing balance'' to read: ''An institution that has a reserve balance requirement of zero may still have a contractual clearing balance.''

G. Section 204.3 Reporting and Location

(1) Proposed Amendment

The Board proposed re-organizing the regulatory provisions governing the calculation of required reserves, the maintenance of required reserves, and the submission of reports of deposits (from which required reserves are calculated) into three separate subsections. The proposed amendments were not intended to make substantive changes to these provisions, but rather to reorganize them for greater ease of reference and to make minor editorial changes for clarity.

The Board proposed a new § 204.3(a), consisting of the text of the first sentence of current § 204.3(a)(2)(i) with proposed amendments clarifying (1) the authority of the Board or a Federal Reserve Bank to require reports of deposits or any other form or statement from a depository institution relating to reserve requirements and (2) where reports of deposits are to be submitted in light of the account location provisions of the regulation.

The Board proposed to relocate the text of the second sentence of current § 204.3(a)(2)(i) (stipulating reporting requirements for a foreign bank's U.S. branches and agencies and for an Edge or Agreement corporation's offices operating within the same State and the same Federal Reserve District) to new § 204.3(b). The Board proposed to relocate the text of the third sentence of current § 204.3(a)(1) (obligations of majority-owned U.S. subsidiaries of a depository institution) to new § 204.3(c).

The Board proposed to relocate the text, with one technical amendment, of current § 204.3(a)(3) (governing assignment of low reserve tranche and reserve requirement exemption) to new § 204.3(d). The Board proposed amending the text of current § 204.3(a)(3) (new § 204.3(d)) to conform the section number reference to reserve requirement ratios (§ 204.9) to that section's new section number (§ 204.4(f)).

The Board did not propose any changes to current § 204.3(e), which addresses computation of transaction accounts for deposit reporting purposes. The Board proposed to relocate current § 204.3(a)(2)(iii) (correspondent not responsible for guaranteeing the accuracy of reports submitted by respondents) to new § 204.3(f).

Finally, the Board proposed to relocate the text of current § 204.3(b)(2) to new § 204.3(g) with two amendments. One amendment would conform

[17] See final rule on payment of interest on balances and excess balance accounts in today's **Federal Register**.

internal references to other proposed amendments. The other amendment would provide that a depository institution is considered to be located at the location specified in the institution's articles of incorporation or as specified by the institution's primary regulator. The Board proposed the second amendment in light of the fact that an institution may move its head office or primary location from that specified in its charter or organizing certificate, but that the charter or organizing certificate may not reflect that move. In such cases, the move instead may be reflected in the institution's revised articles of incorporation or otherwise as recognized by the institution's primary regulator.

(2) Comments Received

The Board received one comment regarding proposed new § 204.3(a), asking that the Board ''be judicious in the information requested'' from reporting entities because ''the collective burden of myriad reports and other information collections imposed by the bank regulators is enormous.'' This commenter stated that ''[w]hile the proposed additional text in section 204.3(a) is not objectionable on its face, it nevertheless creates another opportunity for the Federal Reserve System to impose more regulatory burden in a way that evokes the image of 'death by a thousand cuts.' ''

(3) Comment Analysis and Final Rule

The Board is keenly aware of the burden imposed by regulatory reporting on depository institutions. The proposed amendment to section 204.3(a) was intended solely to express existing authority. The Board did not propose this amendment as an attempt to increase its authority to require regulatory reports, or to increase the number or extent of regulatory reports currently required. As required by other law, the Board re-evaluates its reporting requirements periodically in order to minimize or eliminate duplicative or otherwise burdensome reports. As also required by other law, the Board carefully evaluates any proposed new reporting requirements to avoid placing unnecessary additional costs on reporting entities. With these principles in mind, the Board is adopting § 204.3(a) as proposed.

The Board received no comments on proposed §§ 204.3(b)–(g) and is adopting those amendments as proposed.

H. Section 204.4 Computation of Required Reserves

The Board proposed moving the provisions relating to computation of required reserves to a new separate paragraph, proposed § 204.4, ''Computation of Required Reserves.'' For some provisions, the Board proposed minor editorial amendments for clarity; for other provisions, the Board proposed no changes (apart from re-designation as § 204.4). The Board received one comment on these proposed amendments, suggesting that the words ''or agreement corporation'' should be added to the end of proposed § 204.4(b) (providing that Edge and agreement corporations may not deduct balances due from another U.S. office of ''the same Edge or agreement corporation''). The Board is adopting a final § 204.4(b) that incorporates this comment as the existing omission of ''or Agreement corporation'' was unintentional. The Board is also making an editorial change to § 204.4(a) to provide consistent usage of terms throughout Regulation D. The Board received no other comments on these proposed amendments and, apart from adopting the one suggestion proposed by the comment and the editorial change, is adopting the amendments as proposed.

I. Section 204.5 Maintenance of Required Reserves

The Board proposed moving the existing provisions regarding maintenance of required reserves, including the provisions on maintenance of required reserves pursuant to pass-through agreements, to a new § 204.5, ''Maintenance of Required Reserves.'' Specifically, the proposed amendments deleted references to ''non-member institutions'' in discussing pass-through arrangements, clarified that depository institutions that do not hold required reserve balances may serve as pass-through correspondents, conformed numeric references to other proposed amendments, and made other minor editorial amendments for clarity and to conform language to other proposed amendments and current usage. No substantive changes were intended. The Board received no comments on these proposed amendments and is adopting them as proposed.

J. Section 204.6 Charges for Reserve Deficiencies

(1) Proposed Amendment

The Board proposed moving the existing provisions regarding charges for reserve deficiencies to a new § 204.6, ''Charges for Reserve Deficiencies.'' The Board also proposed deleting provisions describing guidelines for waivers by Reserve Banks of small or infrequent charges. The Board proposed this deletion because the provision described only in part the extent of the discretion of the Reserve Banks with respect to waivers of deficiency charges. The deletion was intended to avoid the implication that Reserve Banks must waive charges in the circumstances described.

(2) Comments Received

The Board received two comments on these proposed amendments, both in opposition to the proposal to delete the provisions related to waivers. One commenter stated that it is ''inappropriate to eliminate this policy direction to Reserve Banks without acknowledging that its elimination represents a substantive change'' from existing policy, which the commenter described as ''sound policy [that] should not be eliminated nor changed.'' The other commenter stated that the existing provision ''simply incorporates the Reserve Banks'' guidelines [that outline when waivers may be appropriate] and notes two instances where waivers are available.'' This commenter also expressed concern that the proposal to delete the waiver provision ''impli[es] that waivers may not be available in the circumstances identified in the current rule,'' that is, ''when the charge would be small or when the deficiency falls below a predetermined threshold.'' The commenter stated that these two circumstances ''seem appropriate situations for the Board to exercise its discretion not to impose a charge'' and that the Board should ''share its reasoning'' if the Board intends for charges to be automatically imposed in those cases. The commenter urged the Board ''to retain the current examples of when charges will be waived and simply note that they are illustrative.''

(3) Comment Analysis and Final Rule

The intent of the Board's proposal was to eliminate references to obsolete guidelines and to avoid the implication that Reserve Banks must waive deficiency charges in certain circumstances. The Board did not intend the proposed amendments to be a substantive policy change, as the Reserve Banks retain the same discretion with respect to waivers of deficiency charges under the proposed amendment as under former section 204.7(a)(2). Accordingly, the Board has decided to delete the reference to the obsolete guidelines, as proposed, and to add language to the provision clarifying the discretion of the Reserve Banks with respect to waiver of deficiency charges. The Board is retaining the current examples of when a Reserve Bank may

waive charges and clarifying that they are illustrative. As proposed, the language relating to charges for reserve deficiencies is moved from § 204.7 to § 204.6.

K. Section 204.7 Transitional Adjustments in Mergers

The Board proposed re-designating the current provisions regarding transitional adjustments in mergers to a new section, § 204.7. No other changes were proposed. The Board received no comments on these proposed amendments. Since the Board proposed these amendments in February 2008, the Board has made adjustments to its clearing balance policy that discontinued practices related to reserve requirements that were no longer necessary in light of the amendments to Regulation D implementing the payments of interest on balances at Reserve Banks.[18] At that time, the Board accordingly removed the provision in Regulation D regarding transitional adjustments in mergers. The Board has decided to retain the changes to its clearing balance policy and has confirmed that removal as part of the final rule on payment of interest on balances at Reserve Banks.[19]

L. Section 204.8 International Banking Facilities

The Board did not propose any changes to § 204.8.

M. Section 204.9 Emergency Reserve Requirement

The Board proposed re-designating the current provisions related to emergency reserve requirements to a new section, § 204.9. No other changes to the section were proposed. The Board received no comments on these proposed amendments and is adopting them as proposed.

N. Section 204.7 Supplemental Reserve Requirement

The Board proposed re-designating the current provisions to a new section, § 204.10. No other changes to the section were proposed. The Board received no comments on the proposed amendments. Since the proposal, § 204.10 has been designated ''Payment of interest on balances.'' The Board, however, has removed the provisions relating to transitional adjustments in mergers that were proposed to be moved to § 204.7. In light of the designation of § 204.10 as ''Payment of interest on balances,'' the Board is moving the provisions previously set forth in section 204.9 to new § 204.7.

O. Section 209.2(c)(1) of Regulation I Location of Bank—General Rule

The Board proposed amending section 209.2(c)(1) to conform that section to the proposed § 204.3(g) of Regulation D, which the Board has decided to adopt, discussed *supra*. The Board received no comments on these proposed amendments and is adopting them as proposed.

IV. Solicitation of Comments Regarding Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all final rules. 12 U.S.C. 1408. The Board has sought to present this amendment in a simple and straightforward manner. The Board received no comments on whether the proposed rule was clearly stated and effectively organized or on how the Board might make the proposed text easier to understand.

V. Final Regulatory Flexibility Analysis

An initial regulatory flexibility analysis (IRFA) was included in the Board's proposed rule in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). In the IRFA, the Board specifically solicited comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities. The Board received no comments in response to its request. Section 4 of the RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Banks and other depository institutions are considered ''small'' if they have less than $165 million in assets. For the reasons stated below, the Board is certifying that the final rule will not have a significant impact on a substantial number of small entities.

1. *Statement of the need for and the objectives of the final rule*. The Board is publishing final amendments to Regulations D and I to conform the regulations to provisions of the Financial Services Regulatory Relief Act of 2006, to modernize the regulations in light of technological developments, to reduce regulatory burden, and to simplify regulatory compliance. Section 19 of the Act was enacted to impose reserve requirements on certain deposits and other liabilities of depository institutions for monetary policy purposes. Section 19 also authorizes the Board to promulgate such regulations as it may deem necessary to effectuate the purposes of the section. The Board believes that the final rule is within Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of section 19 of the Act.

2. *Summary of significant issues raised by the public comments in response to the initial regulatory flexibility analysis*. The Board received no comments on its initial regulatory flexibility analysis or on whether the proposed rule would have a significant economic impact on a substantial number of small entities.

3. *Small entities affected by the final rule*. The final rule would affect all depository institutions currently subject to reserve requirements. The Board estimates that approximately 8,195 depository institutions are subject to reserve requirements, of which approximately 3,800 could be considered ''small'' for purposes of RFA (entities with assets of $165 million or less).

4. *Description of projected reporting, recordkeeping and other compliance requirements of the final rule*. The final rule does not alter any of the reporting or recordkeeping provisions that already apply to depository institutions.

5. *Significant alternatives to the revisions in the final rule*. The Board received no comments suggesting significant alternatives to the proposed rule that would minimize the impact of the proposed rule on small entities. There are no significant alternatives to the revisions in the final rule that would minimize the impact on small entities.

The final rule does not impose any additional burden on depository institutions, including small entities. Moreover, the final rule relieves depository institutions, including small entities, of any burdens associated with the ''three'' sublimit on certain convenient transfers from savings deposits, as well as any burdens associated with restricting pass-through account arrangements to non-member banks. Thus, the Board certifies that the final rule will not have a significant economic impact on small entities.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

[18] *See* 73 FR 59482, 59484–85 (Oct. 9, 2008).

[19] *See* final rule on payment of interest on balances elsewhere in today's **Federal Register**.

List of Subjects in 12 CFR Parts 204 and 209

Banks, Banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR parts 204 and 209 as follows:

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

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

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

■ 2. § 204.2 is amended by revising paragraphs (d)(2), (k) and (l), and adding new paragraphs (w) and (x) to read as follows:

§ 204.2 Definitions.

* * * * *

(d) * * *

(2) The term ''savings deposit'' also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA), that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers and withdrawals, or a combination of such transfers and withdrawals, per calendar month or statement cycle (or similar period) of at least four weeks, to another account (including a transaction account) of the depositor at the same institution or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, or by check, draft, debit card, or similar order made by the depositor and payable to third parties. A preauthorized transfer includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)) or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a transaction account by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine, or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.[4]

* * * * *

(k)(1) *Vault cash* means United States currency and coin owned and booked as an asset by a depository institution that may, at any time, be used to satisfy claims of that depository institution's depositors and that meets the requirements of paragraph (k)(2)(i) or (k)(2)(ii) of this section.

(2) *Vault cash* must be either:

(i) Held at a physical location of the depository institution (including the depository institution's proprietary ATMs) from which the institution's depositors may make cash withdrawals; or

(ii) Held at an alternate physical location if—

(A) The depository institution claiming the currency and coin as vault cash at all times retains full rights of ownership in and to the currency and coin held at the alternate physical location;

(B) The depository institution claiming the currency and coin as vault cash at all times books the currency and coin held at the alternate physical location as an asset of the depository institution;

(C) No other depository institution claims the currency and coin held at the alternate physical location as vault cash in satisfaction of that other depository institution's reserve requirements;

(D) The currency and coin held at the alternate physical location is reasonably nearby a location of the depository institution claiming the currency and coin as vault cash at which its depositors may make cash withdrawals (an alternate physical location is considered ''reasonably nearby'' if the depository institution that claims the currency and coin as vault cash can recall the currency and coin from the alternate physical location by 10 a.m. and, relying solely on ground transportation, receive the currency and coin not later than 4 p.m. on the same calendar day at a location of the depository institution at which its depositors may make cash withdrawals); and

(E) The depository institution claiming the currency and coin as vault cash has in place a written cash delivery plan and written contractual arrangements necessary to implement that plan that demonstrate that the currency and coin can be recalled and received in accordance with the requirements of paragraph (k)(2)(ii)(D) of this section at any time. The depository institution shall provide copies of the written cash delivery plan and written contractual arrangements to the Federal Reserve Bank that holds its account or to the Board upon request.

(3) ''Vault cash'' includes United States currency and coin in transit to a Federal Reserve Bank or a correspondent depository institution for which the reporting depository institution has not yet received credit, and United States currency and coin in transit from a Federal Reserve Bank or a correspondent depository institution when the reporting depository institution's account at the Federal Reserve or correspondent bank has been charged for such shipment.

(4) Silver and gold coin and other currency and coin whose numismatic or bullion value is substantially in excess of face value is not vault cash for purposes of this part.

* * * * *

(l) *Pass-through account* means a balance maintained by a depository institution with a correspondent institution under § 204.5(d).

* * * * *

(w) *Clearing balance allowance* means the greater of $25,000 or two percent of an institution's contractual clearing balance.

(x) *Contractual clearing balance* means an amount that an institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to any reserve balance requirement. An institution that has a reserve balance requirement of zero may still have a contractual clearing balance.

[4] In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definition of ''savings deposit,'' a depository institution must either:

(a) Prevent withdrawals or transfers of funds from this account that are in excess of the limits established by paragraph (d)(2) of this section, or

(b) Adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the established limits on more than occasional basis. For customers who continue to violate those limits after they have been contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the transfer and draft capacities of the account. An account that authorizes withdrawals or transfers in excess of the permitted number is a transaction account regardless of whether the authorized number of transactions is actually made. For accounts described in paragraph (d)(2) of this section, the institution at its option may use, on a consistent basis, either the date on the check, draft, or similar item, or the date the item is paid in applying the limits imposed by that section.

■ 3. Amend § 204.3 by revising the heading, removing paragraphs (h) and (i), and revising paragraphs (a) through (d), (f), and (g) to read as follows:

§ 204.3 Reporting and location.

(a) Every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement corporation shall file a report of deposits (or any other form or statement that may be required by the Board or by a Federal Reserve Bank) with the Federal Reserve Bank in the Federal Reserve District in which it is located, regardless of the manner in which it chooses to maintain required reserve balances.

(b) A foreign bank's U.S. branches and agencies and an Edge or Agreement corporation's offices operating within the same State and the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(c) For purposes of this part, the obligations of a majority-owned (50 percent or more) U.S. subsidiary (except an Edge or Agreement corporation) of a depository institution shall be regarded as obligations of the parent depository institution.

(d) A depository institution, a foreign bank, or an Edge or Agreement corporation shall, if possible, assign the low reserve tranche and reserve requirement exemption prescribed in § 204.4(f) to only one office or to a group of offices filing a single aggregated report of deposits. The amount of the reserve requirement exemption allocated to an office or group of offices may not exceed the amount of the low reserve tranche allocated to such office or offices. If the low reserve tranche or reserve requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche or exemption may be assigned to other offices or groups of offices of the same institution until the amount of the tranche (or net transaction accounts) or exemption (or reservable liabilities) is exhausted. The tranche or exemption may be reallocated each year concurrent with implementation of the indexed tranche and exemption, or, if necessary during the course of the year to avoid underutilization of the tranche or exemption, at the beginning of a reserve computation period.

* * * * *

(f) The Board and the Federal Reserve Banks will not hold a pass-through correspondent responsible for guaranteeing the accuracy of the reports of deposits submitted by its respondents.

(g)(1) For purposes of this section, a depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation is located in the Federal Reserve District that contains the location specified in the institution's charter, organizing certificate, license, or articles of incorporation, or as specified by the institution's primary regulator, or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (g)(2) of this section.

(2) If the location specified in paragraph (g)(1) of this section, in the Board's judgment, is ambiguous, would impede the ability of the Board or the Federal Reserve Banks to perform their functions under the Federal Reserve Act, or would impede the ability of the institution to operate efficiently, the Board will determine the Federal Reserve District in which the institution is located, after consultation with the institution and the relevant Federal Reserve Banks. The relevant Federal Reserve Banks are the Federal Reserve Bank whose District contains the location specified in paragraph (g)(1) of this section and the Federal Reserve Bank in whose District the institution is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the institution, the location of the institution's head office, the locations where the institution performs its business, and the locations that would allow the institution, the Board, and the Federal Reserve Banks to perform their functions efficiently and effectively.

■ 4. A new § 204.4 is added to read as follows:

§ 204.4 Computation of required reserves.

(a) In determining the reserve requirement under this part, the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States (including such amounts due from United States branches and agencies of foreign banks and Edge and Agreement corporations) may be deducted from the amount of gross transaction accounts. The amount that may be deducted may not exceed the amount of gross transaction accounts.

(b) United States branches and agencies of a foreign bank may not deduct balances due from another United States branch or agency of the same foreign bank, and United States offices of an Edge or Agreement Corporation may not deduct balances due from another United States office of the same Edge or Agreement Corporation.

(c) Balances ''due from other depository institutions'' do not include balances due from Federal Reserve Banks, pass-through accounts, or balances (payable in dollars or otherwise) due from banking offices located outside the United States. An institution exercising fiduciary powers may not include in balances ''due from other depository institutions'' amounts of trust funds deposited with other banks and due to it as a trustee or other fiduciary.

(d) For institutions that file a report of deposits weekly, required reserves are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during a 14-day computation period ending every second Monday.

(e) For institutions that file a report of deposits quarterly, required reserves are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during the 7-day computation period that begins on the third Tuesday of March, June, September, and December.

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios below to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

Reservable liability	Reserve requirement ratio
NET TRANSACTION ACCOUNTS:	
$0 to reserve requirement exemption amount ($10.3 million)	0 percent of amount.
Over reserve requirement exemption amount ($10.3 million) and up to low reserve tranche ($44.4 million).	3 percent of amount.
Over low reserve tranche ($44.4 million)	$1,023,000 plus 10 percent of amount over $44.4 million.
Nonpersonal time deposits	0 percent.

Reservable liability	Reserve requirement ratio
Eurocurrency liabilities	0 percent.

§ 204.9 [Removed]

■ 5. Section 204.9 is removed.

§ 204.5 [Redesignated as § 204.9]

■ 6. Section 204.5 is redesignated as § 204.9.

■ 7. New § 204.5 is added to read as follows:

§ 204.5 Maintenance of required reserves.

(a)(1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or Agreement corporation shall maintain required reserves in the form of vault cash and, if vault cash does not fully satisfy the institution's required reserves, in the form of a balance maintained

(i) Directly with the Federal Reserve Bank in the Federal Reserve District in which the institution is located, or

(ii) With a pass-through correspondent in accordance with § 204.5(d).

(2) Each individual institution subject to this part is responsible for satisfying its reserve balance requirement, if any, either directly with a Federal Reserve Bank or through a pass-through correspondent.

(b)(1) For institutions that file a report of deposits weekly, the balances that are required to be maintained with the Federal Reserve shall be maintained during a 14-day maintenance period that begins on the third Thursday following the end of a given computation period.

(2) For institutions that file a report of deposits quarterly, the balances that are required to be maintained with the Federal Reserve shall be maintained during each of the 7-day maintenance periods during the interval that begins on the fourth Thursday following the end of the institution's computation period and ends on the fourth Wednesday after the close of the institution's next computation period.

(c) Cash items forwarded to a Federal Reserve Bank for collection and credit shall not be counted as part of the reserve balance to be carried with the Federal Reserve until the expiration of the time specified in the appropriate time schedule established under Regulation J, ''Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire'' (12 CFR Part 210). If a depository institution draws against items before that time, the charge will be made to its account if the balance is sufficient to pay it; any resulting impairment of reserve balances will be subject to the penalties provided by law and to the reserve-deficiency charges provided by this part. However, the Federal Reserve Bank may, at its discretion, refuse to permit the withdrawal or other use of credit given in an account for any time for which the Federal Reserve Bank has not received payment in actually and finally collected funds.

(d)(1) A depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation required to maintain reserve balances (''respondent'') may select only one pass-through correspondent institution to pass through its required reserve balances, unless otherwise permitted by the Federal Reserve Bank in whose District the respondent is located. Eligible pass-through correspondent institutions are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, depository institutions, U.S. branches or agencies of foreign banks, and Edge and Agreement corporations that maintain required reserve balances, which may be zero, at a Federal Reserve Bank. In addition, the Board reserves the right to permit other institutions, on a case-by-case basis, to serve as pass-through correspondents. The correspondent chosen must subsequently pass through the required reserve balances of its respondents directly to a Federal Reserve Bank. The correspondent placing funds with a Federal Reserve Bank on behalf of respondents will be responsible for account maintenance as described in paragraph (d)(4) of this section.

(2) Respondents or correspondents may institute, terminate, or change pass-through agreements for the maintenance of required reserve balances by providing all documentation required for the establishment of the new agreement or termination of the existing agreement to the Federal Reserve Banks involved within the time period provided for such a change by those Reserve Banks.

(3) A correspondent that passes through required reserve balances of respondents shall maintain such balances, along with the correspondent's own required reserve balances (if any), in a single commingled account at the Federal Reserve Bank in whose District the correspondent is located. The balances held by the correspondent in an account at a Reserve Bank are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the reserve balances of another institution that have been passed through the correspondent.

(4)(i) A pass-through correspondent shall be responsible for assuring the maintenance of the appropriate aggregate level of its respondents' required reserve balances. A Federal Reserve Bank will compare the total reserve balance required to be maintained with the total actual reserve balance held in such account for purposes of determining required-reserve deficiencies, imposing or waiving charges for deficiencies in required reserves, and for other reserve maintenance purposes. A charge for a deficiency in the aggregate level of the required reserve balance will be imposed by the Reserve Bank on the correspondent maintaining the account.

(ii) Each correspondent is required to maintain detailed records for each of its respondents in a manner that permits Reserve Banks to determine whether the respondent has provided a sufficient required reserve balance to the correspondent. A correspondent passing through a respondent's required reserve balance shall maintain records and make such reports as the Board or Reserve Bank requires in order to ensure the correspondent's compliance with its responsibilities for the maintenance of a respondent's reserve balance. Such records shall be available to the Reserve Banks as required.

(iii) The Federal Reserve Bank may terminate any pass-through agreement under which the correspondent is deficient in its recordkeeping or other responsibilities.

(iv) Interest paid on supplemental reserves (if such reserves are required under § 204.7) held by a respondent will be credited to the account maintained by the correspondent.

(e) Any excess or deficiency in an institution's required reserve balance shall be carried over and applied against the balance maintained in the next maintenance period as specified in this paragraph. The amount of any such excess or deficiency that is carried over shall not exceed the greater of:

(1) The amount obtained by multiplying 0.04 times the sum of depository institution's required

reserves and the depository institution's contractual clearing balance, if any, and then subtracting from this product the depository institution's clearing balance allowance, if any; or

(2) $50,000, minus the depository institution's clearing balance allowance, if any. Any carryover not offset during the next period may not be carried over to subsequent periods.

§ 204.7 [Removed]

■ 8. Section 204.7 is removed.

§ 204.6 [Redesignated as § 204.7]

■ 9. Section 204.6 is redesignated as § 204.7.

■ 10. New § 204.6 is added to read as follows:

§ 204.6 Charges for reserve deficiencies.

(a) Deficiencies in a depository institution's required reserve balance, after application of the carryover provided in § 204.5(e), are subject reserve-deficiency charges. Federal Reserve Banks are authorized to assess charges for deficiencies in required reserves at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. Charges shall be assessed on the basis of daily average deficiencies during each maintenance period. Reserve Banks may, as an alternative to levying monetary charges, after consideration of the circumstances involved, permit a depository institution to eliminate deficiencies in its required reserve balance by maintaining additional reserves during subsequent reserve maintenance periods.

(b) Reserve Banks may waive the charges for reserve deficiencies except when the deficiency arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements. Decisions by Reserve Banks to waive charges are based on an evaluation of the circumstances in each individual case and the depository institution's reserve maintenance record. For example, a waiver may be appropriate for a small charge or once during a two-year period for a deficiency that does not exceed a certain percentage of the depository institution's required reserves. If a depository institution has demonstrated a lack of due regard for the proper maintenance of required reserves, the Reserve Bank may decline to exercise the waiver privilege and assess all charges regardless of amount or reason for the deficiency.

(c) In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the Federal supervisory authority involved.

(d) Violations of this part may be subject to assessment of civil money penalties by the Board under authority of Section 19(1) of the Federal Reserve Act (12 U.S.C. 505) as implemented in 12 CFR part 263. In addition, the Board and any other Federal financial institution supervisory authority may enforce this part with respect to depository institutions subject to their jurisdiction under authority conferred by law to undertake cease and desist proceedings.

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

■ 10. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 2222, 248, 282, 286–288, 321, 323, 327–328, 333, and 466.

■ 11. § 209.2 is amended by revising paragraph (c)(1) to read as follows:

§ 209.2 Banks desiring to become member banks.

* * * * *

(c) * * *

(1) *General rule.* For purposes of this part, a national bank or a State bank is located in the Federal Reserve District that contains the location specified in the bank's charter or organizing certificate, or as specified by the institution's primary regulator, or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (c)(2) of this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12431 Filed 5–28–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD35

Special Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: Pursuant to section 7(b)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(5), the FDIC is adopting a final rule to impose a 5 basis point special assessment on each insured depository institution's assets minus Tier 1 capital as of June 30, 2009. The amount of the special assessment for any institution, however, will not exceed 10 basis points times the institution's assessment base for the second quarter 2009 risk-based assessment. The special assessment will be collected on September 30, 2009. The final rule also provides that if, after June 30, 2009, the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level that shall be close to or below zero at the end of any calendar quarter, the Board, by vote, may impose additional special assessments of up to 5 basis points on all insured depository institutions based on each institution's total assets minus Tier 1 capital reported on the report of condition for that calendar quarter. Any single additional special assessment will not exceed 10 basis points times the institution's assessment base for the corresponding quarter's risk-based assessment. The earliest possible date for imposing any such additional special assessment under the final rule would be September 30, 2009, with collection on December 30, 2009. The latest possible date for imposing any such additional special assessment under the final rule would be December 31, 2009, with collection on March 30, 2010. Authority to impose any additional special assessments under the final rule terminates on January 1, 2010.

DATES: *Effective Date:* June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Acting Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898–8967; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801 or Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance (703) 562–6167.

SUPPLEMENTARY INFORMATION:

I. Background

Recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (the fund or the DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008, and is expected to decline further by March 31, 2009. Twenty-five institutions failed in 2008, and the FDIC projects a substantially higher rate of institution failures this year and in the next few years, leading to a further decline in the reserve ratio. (As of May 15, 2009, 33 institutions had failed in 2009.) Because the fund reserve ratio fell below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, the Federal Deposit Insurance Reform Act of 2005 (the Reform Act) required the FDIC to establish and implement a Restoration Plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances.[1]

On October 7, 2008, the FDIC established a Restoration Plan for the DIF.[2] The Restoration Plan called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years. The plan also required the FDIC to update its loss and income projections for the fund and, if needed to ensure that the fund reserve ratio reached 1.15 percent within five years, increase assessment rates. The FDIC amended the Restoration Plan on February 27, 2009, and extended the time within which the reserve ratio must be returned to 1.15 percent from five years to seven years due to extraordinary circumstances.[3] The FDIC also adopted a final rule (the assessments final rule) that, among other things, set quarterly initial base assessment rates at 12 to 45 basis points beginning in the second quarter of 2009.[4] However, given the FDIC's estimated losses from projected institution failures, these assessment rates will not be sufficient to return the fund reserve ratio to 1.15 percent within seven years and are unlikely to prevent the DIF fund balance and reserve ratio from falling to near zero or becoming negative in 2009.

[1] Section 7(b)(3)(E) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(3)(E).

[2] 74 FR 61598 (October 16, 2008).

[3] 74 FR 9564 (Mar. 4, 2009).

[4] 74 FR 9525 (Mar. 4, 2009).

II. Interim Rule With Request for Comment

On February 27, 2009, the FDIC, using its statutory authority under section 7(b)(5) of the FDI Act (12 U.S.C. 1817(b)(5)), adopted an interim rule with request for comment imposing a 20 basis point special assessment on June 30, 2009, to be collected on September 30, 2009, at the same time that the regular quarterly risk-based assessments for the second quarter of 2009 are collected.[5] Under the interim rule with request for comment, the assessment base for the special assessment was the same as the assessment base for the second quarter risk-based assessment.

The interim rule with request for comment also provided that, after June 30, 2009, if the reserve ratio of the DIF is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level which shall be close to or below zero at the end of any calendar quarter, the Board, by vote, may impose a special assessment of up to 10 basis points as of the end of any such quarter based on each institution's assessment base calculated pursuant to 12 CFR 327.5 for the corresponding assessment period.

III. Comments Received

The FDIC sought comments on every aspect of the interim rule with request for comment, with six particular issues posed. The FDIC received over 14,000 comments, which are discussed in section V below.

IV. Final Rule

The final rule differs in several ways from the interim rule with request for comment. The final rule imposes a 5 basis point special assessment on each institution's assets minus Tier 1 capital as reported on the report of condition as of June 30, 2009, rather than a 20 basis point special assessment on each institution's assessment base for the second quarter 2009 risk-based assessment, as provided in the interim rule with request for comment. The amount of the special assessment for any institution, however, will not exceed 10 basis points times the institution's assessment base for the second quarter 2009 risk-based assessment. The special assessment will be collected on September 30, 2009.

The FDIC estimates that the total amount collected under the special assessment will approximately equal the amount that would have been collected by imposing approximately a 7 and one-third basis point special assessment on the aggregate industry assessment base for the second quarter 2009 risk-based assessment. For all institutions, the assessment rate in the final rule will result in a much smaller assessment than under the interim rule with request for comment.

[5] 74 FR 9338 (Mar. 4, 2009).

According to the FDIC's projections, the special assessment, combined with the rates adopted in the final assessment rule in February 2009, should result in maintaining a year-end 2009 fund balance and reserve ratio that are positive, albeit close to zero.[6, 7] It is important, however, to recognize the inherent uncertainty in these projections. Given the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary, although the amount and timing of such a special assessment is uncertain.

Therefore, the final rule also provides that, if, after June 30, 2009, but before January 1, 2010, the reserve ratio of the DIF is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level which shall be close to or below zero at the end of any calendar quarter, the Board, by vote, may impose an additional special assessment of up to 5 basis points as of the end of any such quarter on all insured depository institutions based on each institution's total assets minus Tier 1 capital as reported on the report of condition for that calendar quarter. Any single additional special assessment will not exceed 10 basis points times the institution's assessment base for the corresponding quarter's risk-based

[6] The Helping Families Save Their Homes Act of 2009, discussed below, extends the temporary deposit insurance coverage limit increase to $250,000 (from the permanent limit of $100,000 for deposits other than retirement accounts) through the end of 2013. The legislation allows the FDIC to factor in the increase in the coverage limit for assessment purposes. Institutions do not currently report the amount of deposits insured above $100,000 (except for retirement accounts). Staff estimates that when institutions begin reporting estimated insured deposits that reflect the higher coverage limit (probably in their September 30, 2009 reports of condition), projected reserve ratios (provided they are positive) will be somewhat lower than they would be using the $100,000 coverage limit. Taking the coverage limit increase into account would not, of course, convert a positive reserve ratio to a negative one.

[7] Also, according to staff's projections, the combination of the 5 basis points special assessment (without any additional special assessments) and regular assessments should return the reserve ratio to 1.15 percent in 2016, one year later than required by the amended Restoration Plan, which requires that the reserve ratio return to 1.15 percent by the end of 2015. It should be noted that the Restoration Plan allows the FDIC the flexibility to adjust assessment rates as needed throughout the plan period to ensure that the fund reserve ratio reaches 1.15 percent within seven years (loss and income projections must be updated at least semiannually).

assessment. The interim rule with request for comment had allowed additional special assessments of up to 10 basis points on the assessment base used for quarterly risk-based assessments.

The earliest any such additional special assessment could be imposed under the final rule would be September 30, 2009, with collection on December 30, 2009. An additional special assessment of up to 5 basis points may be needed and the FDIC will consider whether to impose such an additional special assessment later in 2009, but the amount and timing of any additional special assessment remain uncertain.

Authority to impose any additional special assessments terminates under this rule on January 1, 2010. The FDIC's ability to collect any special assessments imposed prior to January 1, 2010, would not be affected by this termination date.

Special Assessment

The FDIC realizes that assessments are a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. Banks currently face tremendous challenges even without having to pay higher assessments. Assessments reduce the funds that banks can lend in their communities to help revitalize the economy. For that reason, the FDIC has found ways to reduce the size of the special assessment since adopting the interim rule with request for comment. The FDIC recently imposed a surcharge on senior unsecured debt guaranteed under the Temporary Liquidity Guarantee Program (TLGP). Funds collected and anticipated to be collected from this surcharge allow the FDIC to reduce somewhat the size of the special assessment.

The FDIC also requested that Congress increase the FDIC's authority to borrow from Treasury. The size of the special assessment adopted in the interim rule with request for comment reflected the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC had a thin cushion against unforeseen losses because its $30 billion borrowing authority from Treasury for losses from bank failures had not increased since 1991, although industry assets had more than tripled.

On May 20, 2009, Congress increased the FDIC's authority to borrow from Treasury from $30 billion to $100 billion as a part of the Helping Families Save Their Homes Act of 2009. In addition, this legislation authorized a temporary increase until December 31, 2010, in the FDIC's borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC's Board, the Federal Reserve Board, and the Secretary of the Treasury in consultation with the President. This increase in the FDIC's borrowing authority gives the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment significantly while continuing to assess at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment will mitigate the pro-cyclical effects of assessments.

Nevertheless, the FDIC still needs to impose a special assessment. The FDIC currently projects approximately $70 billion in losses due to insured depository institution failures over the next five years, the great majority of which are expected to occur in 2009 and 2010. The $70 billion estimate of losses is about $5 billion higher than the FDIC's estimate in February 2009. The FDIC also currently projects that, without a special assessment, the reserve ratio of the DIF will become negative by the end of 2009. Given current projections, the FDIC expects that the special assessment will keep the DIF positive, albeit at a low level.[8]

Section 7(b)(5) of the FDI Act, governing special assessments, allows the Corporation to impose one or more special assessments on insured depository institutions in an amount determined by the Corporation for any purpose that the Corporation may deem necessary. One of the FDIC's principal purposes in imposing special assessments under this rule is to prevent the reserve ratio of the fund from declining to zero or below. The statute does not define the assessment base to be used when imposing a special assessment. Thus, the FDIC has authority to define the appropriate assessment base for the special assessment by rulemaking. *Chevron USA* v. *NRDC,* 467 U.S. 837, 843 (1984); 12 U.S.C. 1819 (a) Tenth. Moreover, prior to 1991, section 7(b)(4) of the FDI Act defined a depository institution's assessment base as the institution's liability for deposits as reported on the institution's report of condition, subject to certain statutory adjustments. The Federal Deposit Insurance Corporation Improvement Act of 1991 repealed those provisions and substituted the current risk-based assessment system provisions.[9] No specific definition of the assessment base was put in its place, thus giving the FDIC the discretion to establish the appropriate base against which to charge assessments depending on circumstances.

The interim rule with request for comment based the amount of the special assessment on the assessment base used for the regular quarterly risk-based assessments. In contrast, the final rule bases the special assessment on an institution's total assets less Tier 1 capital. After careful consideration, the FDIC has concluded that a departure from the regular risk-based assessment base is appropriate in the current circumstances because it better balances the burden of the special assessment. The FDIC has excluded Tier 1 capital from the assessment base to ensure that no institution will be penalized for holding large amounts of capital.

Unless additional special assessments are needed, all institutions will pay less than they would have under the interim rule with request for comment. Even if a second special assessment is needed, no institution will pay more than it would have paid under the interim rule with request for comment.

A 5 basis point special assessment rate based on assets minus Tier 1 capital should increase the reserve ratio as of the end of 2009 by approximately 10 basis points. According to the FDIC's projections, this 5 basis point special assessment (without any additional special assessments), combined with the rates adopted in the final assessment rule in February 2009, would return the reserve ratio to 1.15 percent in 2016, one year later than required by the amended Restoration Plan, which requires that the reserve ratio return to 1.15 percent by the end of 2015. It should be noted that the Restoration Plan allows the FDIC the flexibility to adjust assessment rates as needed throughout the plan period to ensure that the fund reserve ratio reaches 1.15 percent within seven years (loss and income projections must be updated at least semiannually).

[8] The Helping Families Save Their Homes Act of 2009, discussed above, extends the temporary deposit insurance coverage limit increase to $250,000 (from the permanent limit of $100,000 for deposits other than retirement accounts) through the end of 2013. The legislation allows the FDIC to factor in the increase in the coverage limit for assessment purposes. Institutions do not currently report the amount of deposits insured above $100,000 (except for retirement accounts). The FDIC estimates that when institutions begin reporting estimated insured deposits that reflect the higher coverage limit (probably in their September 30, 2009 reports of condition), projected reserve ratios (provided they are positive) will be somewhat lower than they would be using the $100,000 coverage limit. Taking the coverage limit increase into account would not, of course, convert a positive reserve ratio to a negative one.

[9] Section 302(a), Pub. L. 102–242, 105 Stat. 2236, 2345–48 (Dec. 19, 1991).

As part of the Restoration Plan, the FDIC has the authority to restrict the use of the one-time assessment credit while the plan is in effect, although an institution may still apply any remaining credit against its assessment to the lesser of its assessment or 3 basis points.[10] The FDIC has decided not to restrict assessment credit use in the Restoration Plan. The FDIC projects that the amount of the assessment credit remaining at the time that the special assessment is imposed on June 30, 2009, will be very small and that its use will have very little effect on assessment revenue.[11]

Effect on Capital and Earnings

The FDIC has analyzed the effect of a 5 basis point special assessment on assets minus Tier 1 capital (not to exceed 10 basis points on an institution's June 30, 2009, assessment base) on the capital and earnings of insured institutions. For this analysis, the FDIC has projected that insured institutions' earnings from April 1, 2009, through March 31, 2010, will equal their earnings from April 1, 2008, through March 31, 2009, a period that included several stressful quarters.[12] Given this projection, for the industry as a whole, the 5 basis point special assessment in 2009 would result in March 31, 2010, equity capital that would be approximately 0.2 percent lower than in the absence of a special assessment. Based on this projection for industry earnings, a 5 basis point special assessment would cause 2 institutions (with $2.9 billion in aggregate assets) whose equity-to-assets ratio would have exceeded 4 percent in the absence of such an assessment to fall below that percentage. Of these institutions, the equity-to-assets ratio of one institution (with $0.2 billion in aggregate assets) would fall below 2 percent.

For profitable institutions, the 5 basis point special assessment would result in pre-tax income for 2009 that would be 5.1 percent lower than if the FDIC did not charge the special assessment. For unprofitable institutions, pre-tax losses would increase by an average of 2.0 percent.

Further Special Assessments

The FDIC recognizes that there is considerable uncertainty about its projections for losses and insured deposit growth, and, therefore, of future fund reserve ratios. As a result, the FDIC has concluded that the need for any further special assessments should be considered periodically beginning later this year when the FDIC can use the most recently available data on fund losses and the fund reserve ratio.

Under the final rule, the Board may, by vote, impose additional special assessments of up to 5 basis points each on all insured depository institutions to further ensure that the fund reserve ratio does not decline to a level that could undermine public confidence in federal deposit insurance or to a level which shall be close to or below zero at the end of a calendar quarter. Any such special assessment would be imposed on the last day of a quarter for the remainder of 2009 (September 30 or December 31) and would be collected approximately three months later at the same time that quarterly risk-based assessments are collected. The earliest possible date that the Board, by vote, may impose such an additional special assessment is September 30, 2009 (which would be collected December 30, 2009). The latest possible date for imposing any such special assessment under the final rule would be December 31, 2009 (which would be collected on March 30, 2010). The final rule reduces the maximum size of any such additional special assessment to 5 basis points from the 10 basis points allowed by the interim rule with request for comment, and also changes the base for calculating this special assessment.

Any additional special assessment also would be based on an institution's total assets minus Tier 1 capital as reported on the report of condition for the quarter ending the date the special assessment is imposed rather than being based on the institution's assessment base. Thus, for example, a special assessment imposed on December 31, 2009, would be based on total assets minus Tier 1 capital reported for the fourth quarter of 2009 (and would be collected March 30, 2010). Any single additional special assessment is capped at 10 basis points of the institution's assessment base used for the corresponding quarter's risk-based assessment. If the FDIC needs to impose an additional special assessment larger than 5 basis points, it will do so by further rulemaking.

Near the end of the third and fourth quarters of 2009, if there is a reasonable possibility that the reserve ratio has declined to a level that could undermine public confidence in federal deposit insurance or to a level which shall be close to or below zero, staff will estimate the reserve ratio for that quarter from available data on, or estimates of, insurance fund assessment income, investment income, operating expenses, other revenue and expenses, and loss provisions (including provisions for anticipated failures). Because no data on estimated insured deposits will be available until after the quarter-end, the FDIC will assume that estimated insured deposits will increase during the quarter at the average quarterly rate over the previous four quarters.

If the FDIC estimates that the reserve ratio will fall to a level that the Board believes would adversely affect public confidence or to a level close to or below zero at the end of a calendar quarter, and the Board decides to impose a special assessment of up to 5 basis points, the FDIC will announce the imposition and rate of the special assessment no later than the last day of the quarter. As soon as practicable after any such announcement, the FDIC will have a notice published in the **Federal Register** of the imposition of the special assessment.

For example, if the FDIC estimates in late December 2009 that the reserve ratio on December 31, 2009, will fall to close to or below zero, the FDIC's Board may vote to impose a special assessment of up to 5 basis points. Should the Board so vote, the special assessment will be announced no later than December 31. The announcement will state that the special assessment is being imposed on December 31, 2009, the rate of the assessment, and that the assessment will be collected along with the regular quarterly deposit insurance assessment on March 30, 2010. Notice of the special assessment will be published in the **Federal Register** as soon as practicable.

However, the FDIC will not make its estimates of quarter-end reserve ratios for purposes of any such special assessment, nor will the Board determine whether to impose such a special assessment, until shortly before the end of each quarter, in order to take advantage of the most current data available.

Authority to impose any additional special assessments terminates under this rule on January 1, 2010. However, the FDIC's ability to collect any special assessments imposed prior to January 1, 2010, would not be affected by this termination date. Thus, in the previous

[10] Section 7(b)(3)(E)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)(iv)). Congress awarded the industry, in aggregate, approximately $4.7 billion in assessment credits in the Federal Deposit Insurance Reform Act of 2005. Almost all of these credits have been used.

[11] For 2009 and 2010, credits may not offset more than 90 percent of an institution's assessment. Section 7(e)(3)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)(3)(D)(ii)).

[12] The FDIC excluded goodwill losses and amortization expenses and impairment losses for other intangible assets from earnings during this period, since many of these items were unusual, one-time charges.

example, if the Board voted to impose an additional 5 basis point special assessment on December 31, 2009, the special assessment would be collected with the regular quarterly deposit insurance assessment on March 30, 2010.

V. Summary of Comments

The FDIC received over 14,000 comment letters, the vast majority of which stated that the proposed 20 basis point special assessment could have a significant adverse effect on the industry at a very difficult time in the economic and business cycles. A number of letters from smaller institutions and their trade groups noted that the assessment would be particularly hard for community banks to absorb.

Alternatives

While recognizing that the banking industry stands behind the DIF, most of the comments suggested alternatives to reduce or eliminate a large, one-time special assessment. Proposed alternatives included spreading out payments over a number of quarters or years, increasing the amount of time needed to recapitalize the fund, borrowing from the Treasury, issuing FICO-like bonds, borrowing from the industry, allowing the industry to take an equity stake in the FDIC similar to the credit union model implemented by the National Credit Union Administration (NCUA) for the National Credit Union Share Insurance Fund (NCUSIF), using revenue from the TLGP, Legacy Loan Program and Troubled Asset Relief Program (TARP) initiatives, and reducing FDIC operational and resolutions costs.

The FDIC is aware, and has acknowledged, that a 20 basis point special assessment would be a significant expense for the industry, particularly given current conditions. For the reasons discussed earlier, the FDIC has decided to reduce the size of the special assessment to 5 basis points on each insured depository institution's assets minus Tier 1 capital as of June 30, 2009, with the potential for imposing additional special assessments of up to 5 basis points on each institution's total assets minus Tier 1 capital should the FDIC's Board determine that the fund has declined to a level that would undermine public confidence in the deposit insurance system or to a level close to or below zero at the end of a calendar quarter. This decision, in effect, reduces the special assessment and spreads it out (if more than one assessment becomes necessary), thereby avoiding a large one time fee and the effect of that fee on earnings and capital.

While the increase in the FDIC's borrowing authority from the Treasury gives the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment, the FDIC continues to believe that the line of credit with Treasury should be used to fund unexpected losses, not expected losses.

Many of the other proposed alternative funding mechanisms would require legislative changes, as the FDIC does not currently have the statutory authority to issue equity or create an entity to issue FICO-like bonds. Even if the FDIC had the authority to issue equity, insured institutions would need to determine regularly whether their equity investment was impaired and, if so, whether the impairment was other than temporary. If the investment were other-than-temporarily impaired, institutions would have to recognize an impairment loss in earnings and write down the asset (as credit unions have recently had to do with respect to their deposits in the NCUSIF). Given the FDIC's current projections for the fund balance, banks may have to recognize an other-than-temporary impairment loss on equity investments in the FDIC soon after the issuance of the equity.

While FICO-like bonds, if properly structured, could allow insured institutions to finance recapitalization of the DIF over a long period, Congress is not currently considering this option (or the possibility of allowing the FDIC to issue equity). Consequently, this option would probably not solve the FDIC's short-term need for funds to keep the fund balance positive.

Regarding the proposals to use funds from various financial stability initiatives, as previously discussed, anticipated funds collected from the TLGP surcharge have allowed the FDIC to reduce somewhat the size of the special assessment. The FDIC does not have access to TARP funds.

Borrowing from the industry would create both an asset and offsetting liability for the FDIC and this would not increase the fund or the reserve ratio.

Several commenters, including a national trade association, expressed concern about the potential for a negative feedback loop where the special assessment causes deterioration in performance ratios leading by extension to CAMELS downgrades and a subsequent increase in premiums. The FDIC is aware of this and will issue guidance to examiners following the adoption of this rule instructing them to assign component and composite ratings without regard to payment of the special assessment.

Maximum Rate/Exemption for Weaker Institutions

In addition to requesting comments on the special assessment, the FDIC sought specific comment on whether there should be a maximum rate that the combination of an institution's regular quarterly assessment rate and a special assessment could not exceed and whether weaker institutions should be exempted, in whole or in part, from the special assessment.

The FDIC received a few comments on whether there should be a cap, or maximum rate, that the combination of an institution's regular quarterly assessment rate and a special assessment should not exceed. Several state trade groups noted that, for institutions whose rate is close to 100 basis points, there should be a cap, suggesting 50 basis points. Regarding whether weaker banks should be exempted, many commenters noted that the special assessment should be risk based so that less of the burden would be placed on healthy, well-run banks. However, in response to both questions, some national trade groups noted that the industry needs as many viable institutions as possible to limit costs to recapitalize the DIF.

Given the significant reduction in the amount of the special assessment, the FDIC does not believe that either a cap (other than the general cap of 10 basis points of an institution's assessment base used for its risk-based assessment) or an exemption for weaker institutions is warranted. In addition, the FDIC does not favor using a risk-based system in this situation. The special assessment is intended to rebuild the fund, not to reflect risk of failure. Moreover, a risk-based special assessment would result in too large a premium for the riskiest institutions, particularly when taken in combination with regular premiums.

Alternative Assessment Base/Assistance to Systemically Important Institutions

The FDIC also asked for comments on whether FDIC assessments, including special assessments, should take into account the assistance being provided to systemically important institutions and whether special assessments should be assessed on assets or some other measure, rather than the regular assessment base.

In response, a large number of commenters stated that the special assessment should be based on total assets for two reasons: (1) Assets are a more accurate gauge of risk; and (2) it would place less of the burden on

smaller institutions. Several large banks and trade groups whose clients are predominantly large institutions objected to a new assessment base, arguing that deviation from the current assessment base would be inconsistent with the purpose of the DIF, which is to insure deposits. Several state bankers associations commented that weaker systemically important institutions should pay more, given the amount of assistance already received. A community bank trade group advocated a systemic risk premium.

For the reasons discussed earlier, the FDIC agrees that the special assessment should be based on assets (minus Tier 1 capital).

In response to the question regarding additional assessments, some commenters, including several national trade groups and a large bank, thought that the FDIC should go through a comment period before implementation of additional special assessments.

The FDIC believes the current rule making has provided the public and the industry with sufficient opportunity to comment. Further, the mechanism adopted for additional special assessments allows the FDIC to act quickly, using the most up-to-date data, which reduces the chances that the FDIC would have to impose a special assessment that could have been avoided with better data.

VI. Effective Date

This final rule will take effect June 30, 2009.

VII. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a final rule would not have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment.[13] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[14] The final rule relates directly to the rates imposed on insured depository institutions for deposit insurance. In addition, this final rule does not involve the issuance of a notice of proposed rulemaking. For these reasons, the requirements of the RFA do not apply. Nonetheless, the FDIC is voluntarily undertaking a regulatory flexibility analysis.

As of March 31, 2009, of the 8,247 insured commercial banks and savings institutions, 4,479 were small insured depository institutions, as that term is defined for purposes of the RFA (*i.e.,* those with $165 million or less in assets).

The FDIC's total assessment needs are driven by the statutory requirement that the FDIC adopt a Restoration Plan that provides that the fund reserve ratio reach at least 1.15 percent within five years absent extraordinary circumstances and by the FDIC's aggregate insurance losses, expenses, investment income, and insured deposit growth, among other factors. (The FDIC adopted an amended Restoration Plan extending the time within which the reserve ratio must be returned to 1.15 percent from five years to seven years due to extraordinary circumstances). Under the final rule, each institution would be subject to a special assessment at a uniform rate to help meet FDIC assessment revenue needs. Apart from the uniform special assessment on all institutions, the final rule makes no other changes in rates for any insured institution, including small insured depository institutions. In effect, the final rule would uniformly increase each institution's assessment by 5 basis points of the institution's total assets minus Tier 1 capital for one assessment collection (including small institutions as defined for RFA purposes), and would alter the present distribution of assessments by reducing the percentage of the special assessment borne by small institutions. Using the standard assessment base of deposits as reported in the institution's report of condition (subject to certain statutory adjustments) and applying a 7.33 [15] basis point charge, smaller institutions, as defined here, would bear 3.8 percent of the total cost of the special assessment. Applying a 5 basis point charge on assets minus Tier 1 capital, as provided in the final rule, smaller institutions would bear 2.8 percent of the total cost of the special assessment.

The final rule does not directly impose any ''reporting'' or ''recordkeeping'' requirements within the meaning of the Paperwork Reduction Act. The compliance requirements for the final rule would not exceed existing compliance requirements for the present system of FDIC deposit insurance assessments, which, in any event, are governed by separate regulations. The FDIC is unaware of any duplicative, overlapping or conflicting federal rules.

B. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) Public Law 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule.

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

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations

■ For the reasons set forth in the preamble, the FDIC amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Pub. L. 109–171, 120 Stat. 9–21, and Sec. 3, Pub. L. 109–173, 119 Stat. 3605.

■ 2. In part 327 add new § 327.11 to Subpart A to read as follows:

§ 327.11 Special assessments.

(a) *Special assessment imposed on June 30, 2009.* On June 30, 2009, the FDIC shall impose a special assessment on each insured depository institution of 5 basis points based on the institution's total assets less Tier 1 capital as reported on the report of condition for the second assessment

[13] See 5 U.S.C. 603, 604 and 605.

[14] 5 U.S.C. 601.

[15] The FDIC estimates that the total amount collected under the special assessment will approximately equal the amount that would have been collected by imposing approximately a 7.33 basis point special assessment on the aggregate industry assessment base for the second quarter 2009 risk-based assessment.

period of 2009. The special assessment paid by any institution shall not exceed 10 basis points times the institution's assessment base for the second quarter 2009 risk-based assessment.

(b) *Special assessments after June 30, 2009*—(1) *Authority for additional special assessments.* After June 30, 2009, if the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level which shall be close to or below zero at the end of a calendar quarter, a special assessment of up to 5 basis points on total assets less Tier 1 capital as reported on the report of condition for that calendar quarter may be imposed by a vote of the Board on all insured depository institutions. For any institution, the amount of such a special assessment shall not exceed 10 basis points times the institution's assessment base reported as of the date that the special assessment is imposed.

(2) *Termination of authority.* The authority to impose additional special assessments under this paragraph (b) shall terminate on January 1, 2010, but such termination of authority shall not prevent the Corporation from thereafter collecting any special assessment imposed prior to January 1, 2010.

(3) *Estimation process.* For purposes of any special assessment under this paragraph (b), the FDIC shall estimate the reserve ratio of the Deposit Insurance Fund for the applicable calendar quarter end from available data on, or estimates of, insurance fund assessment income, investment income, operating expenses, other revenue and expenses, and loss provisions, including provisions for anticipated failures. The FDIC will assume that estimated insured deposits will increase during the quarter at the average quarterly rate over the previous four quarters.

(4) *Imposition and announcement of special assessments.* Any special assessment under this paragraph (b) shall be imposed on the last day of a calendar quarter and shall be announced by the end of such quarter. As soon as practicable after announcement, the FDIC will have a notice of the special assessment published in the **Federal Register**.

(c) *Invoicing of any special assessments.* The FDIC shall advise each insured depository institution of the amount and calculation of any special assessment imposed under paragraph (a) or (b) of this section. This information shall be provided at the same time as the institution's quarterly certified statement invoice for the assessment period in which the special assessment was imposed.

(d) *Payment of any special assessment.* Each insured depository institution shall pay to the Corporation any special assessment imposed under paragraph (a) or (b) of this section in compliance with and subject to the provisions of §§ 327.3, 327.6 and 327.7 of subpart A, and the provisions of subpart B. The payment date for any special assessment shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the calendar quarter in which the special assessment was imposed.

Dated at Washington, DC this 22nd day of May, 2009.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12549 Filed 5–27–09; 11:15 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Amendment No. 25–128]

Transport Category Airplanes, Various Technical Amendments and Corrections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This amendment corrects a number of errors in the safety standards for transport category airplanes. None of the changes are substantive in nature, and this amendment will not impose any additional burdens on any person affected by these regulations.

DATES: *Effective Date:* This amendment becomes effective May 29, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact: Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2136; facsimile (425) 227–1149; e-mail: *jeff.gardlin@faa.gov.* For legal questions concerning this final rule, contact: Douglas Anderson, ANM–7, FAA, Office of Regional Counsel, 1601 Lind Ave. SW., Renton, WA 98057–3356 telephone (202) 267–2166; e-mail: *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

A number of unrelated errors in the safety standards for transport category airplanes have been brought to the attention of the FAA. Some are due to inadvertent omissions or other editing errors; others are simply typographical or printing errors. This document amends part 25 to correct those errors. None of the corrections are substantive in nature, and this amendment will not impose any additional burdens on any person affected by these regulations.

List of Subjects in 14 CFR Part 25

Airplanes, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the following, the Federal Aviation Administration amends part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation of part 25 continues to read as follows:

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

§ 25.812 [Amended]

■ 2. Amend § 25.812(h), introductory text, by removing the phrase ''§§ 25.810(a) and (d)'' and adding the phrase ''§§ 25.810(a)(1) and (d)'' in its place.

§ 25.813 [Amended]

■ 3. Amend § 25.813(b)(5) by removing the phrase ''§ 25.807(d)(3)(ii)'' and adding the phrase ''§ 25.807(g)(9)(ii)'' in its place.

Appendix F to Part 25 [Amended]

■ 4. Amend Appendix F, part VII, paragraph (f)(1), by removing the phrase ''paragraph (c)(4) or (c)(4)(i)'' and adding the phrase ''paragraph (c)(3)(iv)'' in its place.

Issued in Washington, DC, on May 22, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–12435 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No.: FAA–2002–13744; Amendment No. SFAR 73–2]

RIN 2120–AJ27

Robinson R–22/R–44 Special Training and Experience Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action continues the existing special training and experience requirements in Special Federal Aviation Regulation (SFAR) No. 73 until the SFAR is revised or rescinded. SFAR No. 73 requires special training and experience for pilots operating the Robinson model R–22 or R–44 helicopters in order to maintain the safe operation of these helicopters. SFAR No. 73 also requires special training and experience for certified flight instructors conducting student instruction or flight reviews in the R–22 or R–44.

DATES: This amendment becomes effective June 29, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions about this final rule contact John D. Lynch, Certification and General Aviation Operations Branch, AFS–810, General Aviation and Commercial Division, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 276–8212. For legal questions about this final rule contact Mike Chase, Office of Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3110.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator, including the authority to issue, rescind, and revise regulations. 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, Chapter 447—Safety Regulation. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations necessary for safety. Under section 44703, the FAA issues an airman certificate to an individual when we find, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate. In this final rule, we continue the existing special training and experience requirements in Special Federal Aviation Regulation (SFAR) No. 73 and eliminate the termination date for SFAR No. 73 until further notice. This final rule ensures pilots have the training and experience necessary to operate these models of Robinson helicopters safely. For this reason, the final rule is within the scope of our authority and is a reasonable and necessary exercise of our statutory obligations.

I. Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructors. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, in 1995 the Federal Aviation Administration (referred to as ''we'') determined that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 model helicopters.

The R–22 is a 2-seat, reciprocating engine powered helicopter that is frequently used as a low-cost initial student training aircraft. The R–44 is a 4-seat helicopter with operating characteristics and design features that are similar to the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and teetering rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

We found the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979. The small size and relatively low operating costs of this helicopter made it popular as a training or small utility aircraft. Thus, a significant number of the pilots operating R–22 helicopters were relatively inexperienced. Before issuance of SFAR No. 73 in 1995, the Robinson R–22 experienced a higher number of fatal accidents due to main rotor/airframe contact than other piston-powered helicopters. Many of these accidents were caused by low rotor revolutions per minute (RPM) or low ''G'' conditions that resulted in mast bumping or main rotor-airframe contact accidents. Aviation safety authorities attributed these accidents to pilot error by inexperienced pilots. In our analysis of accident data prior to the first issuance of SFAR No. 73, we found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. Accidents in the R–22 and R–44 helicopters have declined markedly since SFAR No. 73 was issued.

II. Previous Regulatory Action

On March 1, 1995, the FAA published SFAR No. 73 (60 FR 11256). This SFAR required certain experience and training to perform pilot-in-command or certified flight instructor duties. SFAR No. 73 was issued on an emergency basis, with an expiration date of December 31, 1997. On November 21, 1997 the FAA published an NPRM (62 FR 62486) to extend SFAR No. 73 to December 31, 2002. The final rule (63 FR 660) extending SFAR No. 73 to December 31, 2002, was published on January 7, 1998. On November 14, 2002, the FAA published an NPRM (67 FR 69106) proposing to extend SFAR No. 73 an additional 5 years. On January 2, 2003, we reissued SFAR No. 73 (68 FR 39) and extended the rule's expiration date to March 31, 2008. On March 31, 2008, we extended SFAR No. 73 until June 30, 2009 (73 FR 17243). On August 7, 2008, we published an NPRM proposing to eliminate the termination date for SFAR No. 73.

III. Summary of Comments

The FAA received 3 brief (one page) comments in response to the proposed rule. All the commenters acknowledged the valuable safety benefits of SFAR No. 73 since 1995, though one commenter thought continuing the SFAR was no longer necessary because of the helicopter community's awareness of the flight characteristics and risks of 2-blade teetering rotor systems. Two commenters were generally supportive of continuing an SFAR for the R–22 and R–44 helicopters, though both commenters thought updating and fine tuning the regulation was needed. All three commenters focused on possible changes that relate to the separate requirements for each model that apply to both piloting and instructing in each model. Lowering the hours required for operating or training in the R–44 was suggested in the context of moving from the R–22 model to the R–44.

One commenter stated that since the adoption of SFAR No. 73 in 1995, the Robinson Helicopter Company has made modifications that affect the R–22 and R–44 fleets. These modifications include a mandatory RPM governor, higher performance engines, hydraulic-

assisted controls, new aircraft placards, and changes to the limitations and normal procedures in the aircraft flight manual. Additionally, this commenter noted that the FAA has updated the Rotorcraft Flying Handbook, FAA–H8083–21, and modified the Practical Test Standards for the helicopter rating practical tests to provide emphasis on the hazards associated with low G flight, mast bumping, and low RPM. This commenter suggested that the FAA establish a Flight Standardization Board (FSB) to evaluate the current situation with these helicopters and make any needed amendments to the SFAR prior to adopting a rule without an expiration date.

The FAA notes that none of the commenters provided any detailed information or data about the current fleet of R–22 and R–44 helicopters. Similarly, none of the commenters analyzed current accident data for the R–22 and R–44 helicopters or provided a safety analysis to support their conclusions.

In the FAA's view, the safety importance of SFAR 73 clearly has been demonstrated. The accident rate for the Robinson R–44 and R–22 helicopter has declined precipitously since SFAR No. 73 was established in 1995. Looking at recent data, the accident records and contributing causes of nearly 100 Robinson R–22 accidents that occurred between 2005 and 2008 show that none of the accidents involved mast bumping, low rotor RPM, or low ''G'' hazards. The additional training required by SFAR No. 73 addresses these specific hazards. Based on the record of effectiveness, even if not solely attributed to SFAR 73, the FAA has determined that reliance on the general awareness in the helicopter community of the operating issues of the R–22 and R–44 helicopters is not consistent with safety.

Nor, does the FAA believe that we need to conduct another FSB for the R–22 and R–44 helicopters before adopting SFAR No. 73 as proposed. In the case of the R–22, the FAA has conducted two FSBs. At the conclusion of the second FSB in the early 1990s, we established the additional training and qualification requirements contained in SFAR No. 73. While modifications made by the Robinson Helicopter Company to the R–22 and R–44 fleets may have improved the R–22 and R–44 helicopters, the FAA believes the additional training and qualification requirements in SFAR No. 73 contributed significantly to reducing the number and types of accidents traditionally associated with these helicopters.

The FAA continues to analyze the number of Robinson R–22 and R–44 accidents in comparison to other makes and models of helicopters. Using the most recent data (2007), Table 1 shows the activity level of the pertinent models of helicopters and number of accidents involving Robinson R–22 and R–44 helicopters in comparison to Schweizer 269 and Enstrom 280 helicopters. These types of helicopters are generally used in the training environment for initial pilot certification.

TABLE 1—2007 GENERAL AVIATION AND AIR TAXI SURVEY BY POPULATION SIZE, ACTIVE HELICOPTERS, TOTAL FLIGHT HOURS, AND AVERAGE FLIGHT HOURS

Helicopter make/ model	Aircraft population size	Est. number active	Percent standard error	Est. percent active	Percent standard error	Est. total hours flown	Percent standard error	Est. average hours	Percent standard error
Enstrom 280	143	108	0.8	75.4	0.8	6,473	12.2	60.0	9.2
Schweizer 269	403	366	0.4	90.7	0.4	147,936	6.0	404.7	5.4
Total		474				154,409		325.8	
R–22	948	863	0.5	91.1	0.5	330,883	5.3	383.2	4.8
R–44	1,022	999	0.2	97.8	0.2	184,624	5.0	184.8	4.9
Total		1,862				515,507		276.9	

ENSTROM 280 AND SCHWEIZER 269 ACCIDENT RATE IN COMPARISON TO THE ROBINSON R–22 AND R–44 ACCIDENT RATE

Helicopter type	Number of accidents *	Accident rate per 100,000 hours of flight time flown
Enstrom 280 and Schweizer 269	18	11.66
Robinson R–22 and R–44	54	10.48

* Accident data from the U.S. National Transportation Safety Board.

The data show the accident rate for the Robinson R–22 and R–44 per 100,000 hours of flight is 10.48. While the accident rate is slightly lower than the accident rate of 11.66 per 100,000 hours of flight for similar training helicopters, the roughly comparable accident rate has been achieved in the context of the special training requirements of SFAR 73. (If the comparison included only the R–22, which sees more use as a training aircraft, the accident rate for the R–22 would be higher than the rate for the Enstrom 280 and the Schweizer 269.) We conclude that the additional training and qualification requirements in SFAR No. 73 have been a major factor leading to an improved safety record for the Robinson R–22 and R–44 helicopter in the training environment.

Table 2 shows the activity level of the pertinent models of helicopters and contains data comparing the accident rate in the Robinson R–22 and R–44 helicopter to the accident rate of helicopters which have a similar teetering or semi-rigid rotor system (Bell 206, Bell 47G, and Hiller UH–12E) as the Robinson R–22 and R–44 helicopter.

TABLE 2—2007 GENERAL AVIATION AND AIR TAXI SURVEY BY POPULATION SIZE, ACTIVE HELICOPTERS, TOTAL FLIGHT HOURS, AND AVERAGE FLIGHT HOURS

Helicopter make/ model*	Aircraft population size	Est. number active	Percent standard error	Est. percent active	Percent standard error	Est. total hours flown	Percent standard error	Est. average hours	Percent standard error
BH–206	1,650	1,448	0.5	87.7	0.5	589,158	3.1	407.0	2.7
BH–47G ...	615	322	1.4	52.4	1.4	41,167	13.0	127.7	6.8
UH–12E	253	119	1.6	47.1	1.6	28,131	11.4	236.1	5.4
Total ..	.....	1,889	.....	.....	.....	658,456	.....	348.6	.....
R–22	948	863	0.5	91.1	0.5	330,883	5.3	383.2	4.8
–44	1,022	999	0.2	97.8	0.2	184,624	5.0	184.8	4.9
Total ..	.....	1,862	.....	.....	.....	515,507	.....	276.9	.....

BELL AND HILLER ACCIDENT RATE IN COMPARISON TO THE ROBINSON R–22 AND R–44 ACCIDENT RATE

Helicopter type	Number of accidents **	Accident rate per 100,000 hours of flight time flown
Bell and Hiller Helicopters	49	7.44
Robinson R–22 and R–44	54	10.48

* Bell Helicopter 206=BH–206; Bell Helicopter 47G=BH–47G; Hiller UH–12E=UH–12E; Robinson R–22=R–22; and Robinson R–44=R–44.
** Accident data from the U.S. National Transportation Safety Board.

The data in Table 2 show the accident rate per 100,000 hours of flight for the Robinson R–22 and R–44 is higher than the accident rate of the Bell 206, Bell 47G, and Hiller UH–12E, 10.48 compared to 7.44, respectively. While the helicopters being compared are different in other ways, nothing in the data suggests a reason to reduce the training requirements of SFAR 73.

The FAA is willing to work with the helicopter industry, owners of Robinson R–22 and R–44 helicopters, and the Robinson Helicopter Company to evaluate any data, information, or safety analyses provided that might lead to future modification of SFAR No. 73. Adopting the rule without a specific expiration date is not a hindrance to modifying the rule based on updated data and analysis. At this time, however, the FAA does not believe an adequate safety rationale has been developed to warrant specific modifications to the current requirements.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

IV. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Analysis, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The final rule will require those who receive or provide instruction in a Robinson R–22 or R–44 helicopter to incur additional costs related to special training and experience requirements. These requirements will impose costs of

approximately $9.8 million (present value, $6.9 million) over 10 years in 2008 dollars. The potential safety benefits from the rule will be a reduction in the number of fatal accidents that occur in Robinson helicopters associated with low ''G'' maneuvers that may result in main rotor/airframe contact. The reduction in the number of accidents would be due to the increased level of safety due to specific flight training and awareness training requirements for all individuals operating Robinson R–22 and R–44 aircraft. SFAR 73 is estimated to avert 22 fatalities associated with low ''G'' maneuvers, and the expected corresponding safety benefits will be approximately $129 million (present value, $90.6 million) over ten years, in 2008 dollars. Since benefits exceed costs, the FAA concludes that this rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will indefinitely extend SFAR 73, initially published on March 1, 1995, and extended three times since. The SFAR is limited to experience and training requirements to perform pilot-in-command and certified flight instructor duties, thereby impacting individuals rather than entities. Therefore, as the Acting FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreement Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–463), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result, this final rule is not considered as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 6 and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant regulatory action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and DOT's Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with

small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Revise section 3 of SFAR No. 73 to read as follows:

Special Federal Aviation Regulation No. 73—Robinson R–22/R–44 Special Training and Experience Requirements

* * * * *

■ 3. *Expiration date.* This SFAR No. 73 shall remain in effect until it is revised or rescinded.

Issued in Washington, DC, on May 26, 2009.

Lynne A. Osmus,

Acting Administrator.

[FR Doc. E9–12532 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 665

[Docket No. 070719388–9911–04]

RIN 0648–AV29

Fisheries in the Western Pacific; Crustacean Fisheries; Deepwater Shrimp

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

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations implementing Amendment 13 to the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region. The intent of this final rule is to inform the public that the associated permitting and reporting requirements have been approved by OMB.

DATES: This rule is effective June 29, 2009. The amendments to 50 CFR 665.13, 665.41, and 665.42, published at 73 FR 70603 (November 21, 2008) and corrected at 73 FR 75622 (December 12, 2008) have been approved by OMB and are effective on June 29, 2009.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700, and to David Rostker, OMB, by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Sustainable Fisheries Division, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at *www.gpoaccess.gov/fr/*.

A final rule for Amendment 13 was published in the **Federal Register** on November 21, 2008 (73 FR 70603), and an associated correction notice was published on December 12, 2008 (73 FR 75622). The requirements of that final rule, other than the collection-of-information requirements, were effective on December 22, 2008. Because OMB approval of the collection-of-information requirements had not been received by the date that final rule was published, the effective date of the associated permitting and reporting requirements in that rule was delayed. OMB approved the collection-of-information requirements contained in the final rule on May 1, 2009.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains new collection-of-information requirements subject to the PRA under OMB Control Number 0648–0586. The public reporting burden for these requirements is estimated to be 0.5 hours per permit applicant, with permit renewals requiring an additional 0.5 hours annually, approximately 10 min per vessel per fishing day to complete Federal catch reports. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson (see **ADDRESSES**), or by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: May 21, 2009

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, amend the table in paragraph (b), under the entry ''50 CFR'' by revising the entries for ''§ 665.13'', ''§ 665.14'', ''§ 665.16'' and ''§ 665.41'' to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	.
* * * * *	
665.13	–0490, and 0586.
665.14	–0214, and 0586.
* * * * *	
665.16	–0360, and 0586.
* * * * *	
665.41	–0490, and 0586.
* * * * *	

[FR Doc. E9–12428 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 129 and 165

[Docket No. FDA–2008–N–0446]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its bottled water regulations to require that bottled water manufacturers test source water for total coliform, as is required for finished bottled water products, and to require, if any coliform organisms are detected in source water, that bottled water manufacturers determine whether any of the coliform organisms are *Escherichia coli* (*E. coli*), an indicator of fecal contamination. FDA also is amending its bottled water regulations to require, if any coliform organisms are detected in finished bottled water products, that bottled water manufacturers determine whether any of the coliform organisms are *E. coli*. FDA also is amending the adulteration provision of the bottled water standard to reflect the possibility of adulteration caused by the presence of filth. Bottled water containing *E. coli* will be considered adulterated, and source water containing *E. coli* will not be considered to be of a safe, sanitary quality and will be prohibited from use in the production of bottled water. FDA is also amending its bottled water regulations to require that, before a bottler can use source water from a source that has tested positive for *E. coli*, the bottler must take appropriate measures to rectify or eliminate the cause of *E. coli* contamination of that source, and that the bottler must keep records of such actions. Existing regulatory provisions require bottled water manufacturers to keep records of new testing required by this rule. This final rule will ensure that FDA's standards for the minimum quality of bottled water, as affected by fecal contamination, will be no less protective of the public health than those set by the Environmental Protection Agency (EPA) for public drinking water.

DATES: This rule is effective December 1, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Lauren Posnick Robin, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1639.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 17, 2008 (73 FR 53775), FDA published a proposed rule to amend its bottled water regulations in parts 129 and 165 (21 CFR parts 129 and 165) to provide increased protection against fecal contamination in water sources used for bottled water and in finished bottled water products (hereafter ''the proposed rule'' or ''the September 17, 2008 proposal''). FDA's current good manufacturing practice (CGMP) regulations for the processing and bottling of bottled water are contained in part 129. FDA's bottled water standard, contained in part 165, includes standard of identity regulations, which define different types of bottled water (§ 165.110(a)); standard of quality regulations, which establish allowable levels for contaminants in bottled water (§ 165.110(b)); required label statements for water of substandard quality (§ 165.110(c)); and an adulteration provision (§ 165.110(d)).

FDA proposed a number of changes to part 129. FDA proposed to amend § 129.35(a)(3)(i) to require that bottled water manufacturers that obtain their source water from other than a public water system (PWS) test their source water at least weekly for total coliform, and that when source water is total coliform positive, that they conduct follow-up[1] testing to determine whether any of the coliform organisms are *E. coli*. Further, FDA proposed to amend § 129.35(a)(3)(i) to indicate that if source water is found to contain *E. coli*, then the water would not be considered water of a safe, sanitary quality as required by § 129.35(a)(1). FDA also proposed in § 129.35(a)(3)(i) to require a bottler to rectify or otherwise eliminate the cause of the *E. coli* contamination. FDA also proposed that source water previously found to contain *E. coli* would be considered negative for *E. coli* after five samples collected from the source water supply over a 24-hour period are tested and found to be *E. coli* negative. FDA proposed in § 129.35(a)(3)(i) that bottlers maintain records of corrective measures taken to rectify or eliminate *E. coli* contamination in source water. FDA also proposed in § 129.80(g)(1) that if any coliform organisms are detected in weekly total coliform testing of finished bottled water, that bottlers must conduct follow-up testing to determine whether any of the coliform organisms are *E. coli*. Finally, FDA proposed revising § 129.35(a)(4)(iv) to include a reference to section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(3)) as a basis for adulteration, in addition to section 402(a)(1) of the act.

FDA proposed a number of changes to part 165. FDA proposed to add § 165.110(b)(2)(i)(B) to indicate that if *E. coli* is present in a sample of finished bottled water products, then the bottled water would be deemed adulterated

[1] In FDA's discussion, ''follow-up'' testing refers to testing to determine whether any of the coliform organisms detected in source water or finished bottled water products are *E. coli*.

under § 165.110(d). FDA also proposed to cite the multiple-tube fermentation (MTF) and membrane filter (MF) methods for both total coliform and *E. coli* testing in § 165.110(b)(2)(ii). Finally, FDA proposed to amend the adulteration provision of the bottled water standard in § 165.110(d) to reflect the possibility of adulteration caused by the presence of filth and to indicate that if *E. coli* is present in bottled water, then the bottled water will be deemed adulterated under section 402(a)(3) of the act.

FDA issued the proposed rule in response to EPA's issuance of a new National Primary Drinking Water Regulation (NPDWR), the Ground Water Rule (GWR), in the **Federal Register** of November 8, 2006 (71 FR 65574). The new NPDWR provides for increased protection against fecal microbial pathogens in PWSs that use ground water sources (also referred to as ground water systems (GWSs)). Under section 410(b)(1) of the act (21 U.S.C. 349(b)(1)), not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water, or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in PWSs but not in water used for bottled water. If FDA fails to take action within the prescribed time period in response to the NPDWR issued by EPA, section 410(b)(4)(A) of the act provides that EPA's NPDWR will apply to bottled water.

II. Summary of and Response to Comments

A. Summary of Comments

The agency received 19 responses, each containing one or more comments, to the September 17, 2008, proposal. The comments were from trade associations, industry, a law firm, an environmental advocacy organization, and consumers. The comments generally supported the proposed rule. Some comments addressed issues that are outside the scope of the proposed rule (e.g., testing of water in general; testing for agricultural chemicals, industrial chemicals, and parasites such as *Giardia*; public disclosure of test results for contaminants other than *E. coli*; and general labeling requirements) and thus will not be discussed here. A number of comments suggested certain modifications to the proposed rule. A summary of these comments and the agency's responses follow.

B. Response to Comments

(Comment 1) One comment suggested FDA make clear that when a bottler conducts secondary[2] sampling of source water previously found to contain *E. coli*, the sampling should include the original site where the *E. coli* positive occurred, if there is more than one sampling site at the source.

(Response) FDA agrees that the sampling site where an *E. coli* positive occurred must be used in secondary testing to determine whether the source can now be considered negative for *E. coli*. Proposed § 129.35(a)(3)(i) provided that source water previously found to contain *E. coli* would be considered negative for *E. coli* after five samples collected from the source water supply over a 24-hour period are tested and found to be *E. coli* negative. To eliminate any possible ambiguity related to the phrases ''source water'' and ''source water supply'' and to make clear what is required before bottlers can use source water from a source that has tested positive for *E. coli*, FDA is revising proposed § 129.35(a)(3)(i), in pertinent part, as follows: ''Before a bottler can use source water from a source that has tested positive for *E. coli*, the bottler must take appropriate measures to rectify or otherwise eliminate the cause of *E. coli* contamination of that source in a manner sufficient to prevent its reoccurrence. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site that originally tested positive for *E. coli* are tested and found to be *E. coli* negative.''

FDA notes that some manufacturers combine source waters from multiple sources. Weekly microbiological testing is required for each separate source in use by the plant. If *E. coli* is detected in one of these sources, secondary testing must be conducted at that same source and at the same sampling site that originally tested positive for *E. coli*.

(Comment 2) One comment stated that FDA should join EPA in mandating sanitary surveys as an effective measure of risk reduction. The comment also stated that sanitary surveys can identify and eliminate risks or weaknesses which weekly water testing cannot, such as cracks in sanitary seals around wells. Finally, the comment stated that if the lack of a primacy program arrangement with the States is the real reason for the lack of a sanitary survey requirement, FDA should look into establishing a primacy program arrangement, such as having the same State agencies and inspectors, which EPA trains and uses to conduct sanitary surveys of public water sources, also conduct sanitary surveys of bottled water sources.

(Response) FDA disagrees with this comment. Although FDA does not have a primacy program arrangement with States to conduct sanitary surveys, FDA believes that the requirement for weekly source water testing for total coliform (and for *E. coli*, should total coliform be detected) in this rule, combined with the existing requirement in the bottled water CGMP regulations for source inspection and approval, will ensure that FDA's standards for the minimum quality of bottled water, as affected by fecal contamination, will be no less protective of the public health than those set by EPA for public drinking water.

While sanitary surveys may help identify potential risks for fecal contamination in source water, such as cracks in sanitary seals, actual fecal contamination of source water is identified by source water testing. This rule requires weekly source water testing for total coliform, with *E. coli* testing in case of a total coliform positive. In addition, as FDA noted in the proposed rule, FDA's CGMP regulations for bottled water already require in § 129.35(a)(1) that product water be from an approved source, defined in § 129.3(a) as ''a source of water and the water therefrom, whether it be from a spring, artesian well, drilled well, municipal water supply, or any other source, that has been inspected and the water sampled, analyzed, and found to be of a safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction.'' Additionally, § 129.35(a)(1) specifies that the approved source be ''properly located, protected, and operated and shall be easily accessible, adequate, and of a safe, sanitary quality* * *'' FDA also notes that certain elements of the GWR's sanitary survey, as outlined by EPA (71 FR 65574 at 65577 and 65586 through 65587), are not relevant to bottled water plants (e.g., distribution system surveys) or are relevant only to EPA's unique regulatory structure (e.g., operator compliance with State requirements), and therefore would not be appropriate for FDA to include in this rule.

[2] In FDA's discussion, ''secondary'' testing refers to testing to determine whether a source previously found to contain *E. coli* can now be considered negative for *E. coli*.

Therefore, FDA believes that the proposed requirement for weekly source water testing for total coliform (and for *E. coli*, should total coliform be detected), combined with the existing requirement in the bottled water CGMP regulations for source inspection and approval, will ensure that FDA's standards for the minimum quality of bottled water, as affected by fecal contamination, will be no less protective of the public health than those set by EPA for public drinking water.

(Comment 3) A number of comments questioned the proposed requirements for frequency of testing of source water and/or finished products in part 129. Some comments suggested that EPA requires more samples than FDA, while citing different numbers for how many samples EPA requires. Another comment stated that weekly testing would not detect intermittent contamination, and that daily testing would be more appropriate, as evidenced by FDA's proposal that a source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected from the same source water supply over a 24-hour period are tested and found to be *E. coli* negative. Several comments made the point that the cost of testing would be low compared with the cost of a disease outbreak resulting from contaminated water.

(Response) FDA disagrees with these comments on the proposed requirements for the frequency of testing of source water and finished products. FDA does not believe that it is appropriate to compare the number of tests required by EPA for total coliform in PWSs to the number of tests required by FDA for total coliform in source and finished bottled water. To monitor the microbiological safety of their distribution systems, PWSs must take samples throughout their distribution systems and in a pattern that is representative of the distribution system. Bottled water plants do not have distribution systems and monitor finished bottled water products from a filling line. Therefore, FDA does not believe that the number of tests required for a PWS distribution system serving a large geographical area is comparable to the monitoring required for a bottled water manufacturing plant.

In this rule FDA is amending its bottled water regulations to require that bottled water manufacturers test source water at least weekly for total coliform, as is required for finished bottled water products, and to require, if any coliform organisms are detected in source water, that bottled water manufacturers determine whether any of the coliform organisms are *E. coli*, an indicator of fecal contamination (§ 129.35(a)(3)(i)). By contrast, EPA requires testing of source water for *E. coli* only when triggered by a coliform positive in the distribution system. FDA also is amending its bottled water regulations to require that if any coliform organisms are detected in finished bottled water products, that bottled water manufacturers determine whether any of the coliform organisms are *E. coli* (§ 129.80(g)(1)). (FDA notes that weekly sampling is the minimum required under the CGMP regulations for bottled water, and that manufacturers should test as frequently as needed to ensure the safety of their products.)

Also, FDA previously established additional microbiological testing requirements to help ensure the safety of finished bottled water products. The CGMP regulations for bottled water in § 129.80(a) state that product water samples shall be taken after processing and prior to bottling by the plant and analyzed as often as is necessary to assure uniformity and effectiveness of the processes performed by the plant. FDA also requires in § 129.80(f) that at least once each 3 months, a bacteriological swab and/or rinse count should be made from at least four containers and closures selected just prior to filling and sealing. All of the samples are required to be free of coliforms, and no more than one of the four samples may exceed more than one bacteria per milliliter of capacity or one colony per square centimeter of surface area.

For these reasons, FDA believes that the frequency of testing of source water and finished products, as set forth in the new and revised requirements under part 129, will ensure that FDA's standards for the minimum quality of bottled water, as affected by fecal contamination, will be no less protective of the public health than those set by EPA for public drinking water.

(Comment 4) One comment stated that the requirement that bottled water manufacturers ''take and analyze at least once a week a representative sample from a batch or segment of a continuous production run for each type of bottled drinking water produced during a day's production'' in § 129.80(g)(1) fails to specify that the day's production that is to be sampled must have been produced during the week in question.

(Response) FDA believes that § 129.80(g)(1) requires that the sample mandated to be taken ''at least once a week'' must be taken from bottled water produced during the week it is sampled. It would not make sense to interpret this provision to allow otherwise in light of the clear intent to mandate regular, timely testing. Further, FDA is not aware of any bottlers who have understood the provision as not requiring the sample to have been produced during the week in question. Therefore, FDA does not believe it is necessary to make any changes to § 129.80(g)(1) based on this comment.

(Comment 5) One comment suggested that FDA establish specific requirements, like the EPA GWR, as to how bottlers should correct *E. coli* contamination. The comment also stated that the FDA should consider employing EPA's various treatment options in order to ensure that bottlers are using methods that are known to be effective.

(Response) FDA does not agree that it is necessary to include specific requirements in its regulations for rectifying or eliminating the cause of *E. coli* contamination. Bottled water manufacturers are responsible for ensuring that their manufacturing operations comply with all applicable provisions of the act and FDA's regulations for bottled water, including the new provision providing that source water found to contain *E. coli* is not considered water of a safe, sanitary quality as required for use in bottled water. As noted in the proposed rule (73 FR 53775 at 53780), bottlers may wish to consult with States or with EPA, or review EPA guidance (*http://www.epa.gov/safewater/disinfection/gwr/compliancehelp.html*), for advice on how to eliminate causes of contamination. FDA notes that, under § 129.35(a)(1), bottled water manufacturers are responsible for using water from sources that have been approved by the government agency or agencies (e.g., State or local agencies) having jurisdiction. These government agencies may have helpful advice on rectifying or eliminating the cause of *E. coli* contamination at a specific source based on local conditions, since the cause of contamination may vary from site to site.

(Comment 6) One comment suggested that FDA update the reference in proposed § 165.110(b)(2)(ii) to the most current version of ''Standard Methods for the Examination of Water and Wastewater.''

(Response) FDA agrees that the most current edition should be cited in the final rule. In the proposed rule, FDA cited the 20th Edition of ''Standard Methods for the Examination of Water and Wastewater.'' However, there is a 21st Edition of ''Standard Methods for the Examination of Water and

Wastewater.'' Therefore, FDA is revising § 165.110(b)(2)(ii) to incorporate by reference the 21st Edition (2005) of ''Standard Methods for the Examination of Water and Wastewater.''

(Comment 7) One comment suggested the need for guidance on demonstrating comparable results when labs are comparing other methods to the MTF and MF methods. The comment further recommended that an established or pre-agreed-upon protocol should be used to prove comparability.

(Response) FDA does not believe that such guidance is necessary. As stated in the proposed rule (73 FR 53775 at 53782), bottlers can use different methods approved by the government agency or agencies having jurisdiction as long as their methods give comparable results to the methods used by FDA. Laboratories routinely adopt new analytical methods and have standard practices to follow for validating the performance of these methods and for comparing the sensitivity, accuracy, and precision of the new methods to currently used methods. These practices, along with the information provided by FDA on allowable levels of *E. coli* and total coliform (revised § 165.110(b)(2)(i)), sampling (§ 165.3(b)), and methodology (revised § 165.110(b)(2)(ii)), should provide laboratories with sufficient information to compare different methods to those used by FDA.

(Comment 8) Several comments recommended that FDA consider a test result for *E. coli* to be a valid ''positive'' only if it has been confirmed.

(Response) FDA agrees that a presumed positive test result for *E. coli* should be confirmed. This rule cites the MTF and MF methods, which incorporate confirmation steps for *E. coli* including streaking presumptive *E. coli* positive cultures on eosin methylene blue (EMB) agar, selecting colonies with the typical appearance of *E. coli*, and using a series of biochemical assays or rapid identification tests to identify *E. coli* isolates (Ref. 1).

As noted in the proposed rule, bottlers can use methods other than the MTF and MF methods to analyze water for total coliform and *E. coli*. However, FDA will use the MTF and MF methods when it tests source water or finished bottled water products. Bottlers that want to use different methods must ensure that their methods give comparable results. FDA notes that alternate methods must be capable of quantifying total coliform, if coliform is present, to meet the standard in § 165.110(b)(2)(i)(A). Furthermore, all methods, including those used to confirm presumed positive *E. coli*, must be methods approved by the government agency or agencies having jurisdiction, as required under § 129.35(a)(3)(ii).

(Comment 9) One comment stated that not all strains of *E. coli* bacteria are pathogenic, and therefore, water with *E. coli* in it is also not necessarily contaminated. The comment added that testing for specific pathogenic strains of *E. coli* and other intestinal parasites would prove more effective than general *E. coli* tests in determining whether water is contaminated.

(Response) FDA agrees that not all strains of *E. coli* are pathogenic. However, FDA disagrees that water with *E. coli* in it is not contaminated and that testing bottled water products for specific pathogenic strains would be more effective than testing for generic *E. coli*. In the GWR, EPA stated that ground water is fecally contaminated when fecal indicators such as *E. coli* are present. Because *E. coli* is indicative of fecal contamination, FDA provided in the proposed rule that bottled water containing *E. coli* would be considered adulterated under section 402(a)(3) of the act, in that it ''consists in whole or in part of any filthy, putrid, or decomposed substance, or * * * is otherwise unfit for food.'' Because testing for generic *E. coli* is sufficient to determine whether bottled water is fecally contaminated, it is not necessary to require testing for specific strains.

In addition, as noted in the GWR, while fecal indicators typically are not harmful when ingested, their presence demonstrates that there is a pathway for pathogenic viruses and bacteria to enter ground water sources (71 FR 65574 at 65576). Therefore, it is not necessary to test for specific pathogenic strains to demonstrate that there is a pathway for pathogenic viruses and bacteria to enter ground water sources. Confining testing to a few specific pathogenic strains would be less effective at detecting fecal contamination than the broader *E. coli* testing required by this rule. Therefore, FDA is not making changes in the final rule to require testing only for pathogenic strains of *E. coli*.

(Comment 10) One comment suggested that FDA adopt EPA's maximum contaminant level goals (MCLGs) as enforceable standards for chemical and microbiological contaminants in bottled water.

(Response) FDA notes that with the exception of fecal contaminants, this comment is outside of the scope of this rulemaking. MCLGs are unenforceable health goals established by EPA. EPA establishes enforceable standards for contaminants in drinking water in the form of maximum contaminant levels (MCLs) or treatment techniques (TTs). The SDWA (section 1412(b)(4) (42 U.S.C. 300g-1(b)(4))) requires EPA to set MCLs and TTs as close to the MCLGs as is feasible, with feasibility including technical and economic considerations. Section 410(b)(3)(A) of the act provides that an FDA regulation issued in response to an EPA MCL shall establish an MCL for the contaminant in bottled water which is no less stringent than the MCL provided in EPA's NPDWR. Likewise, section 410(b)(3)(B) of the act provides that an FDA regulation issued in response to an EPA TT shall be no less protective of the public health than the TT required by EPA's NPDWR. Therefore, FDA's response to NPDWRs is based on the legally enforceable MCLs and TTs, as provided for in the act.

(Comment 11) Several comments suggested that FDA require companies to disclose source information on bottled water labels. One comment said that there are ground water sources and surface water sources that are fouled by fecal pollution or other contaminants, and that public disclosure, on the bottle label, of the precise location of the water withdrawal site, of potential contamination of source water, or of pollutants in bottled waters will provide consumers with the evidence on which to make the decisions to purchase the product that would best suit their needs and the needs of their families.

(Response) FDA disagrees that it should require disclosure of source information as part of this rulemaking. FDA addressed the issue of source disclosure in the final rulemaking establishing a standard of identity for bottled water (§ 165.110(a)) (60 FR 57076 at 57104, November 13, 1995). FDA noted that under section 201(n) of the act (21 U.S.C. 321(n)), the agency must consider whether specific water source labeling information is a material fact whose nondisclosure will render the labeling misleading. FDA concluded that the specific name of the source is not material to ensure the safety of the product, given the requirements for source approval and operation in §§ 129.3(a) and 129.35(a)(1). FDA believes that the specific name of the source is not material to ensure the safety of the product from fecal contamination, in light of the requirements cited above and those added by this rule.

For this reason, FDA is not making any changes in response to these comments.

(Comment 12) Several comments suggested that FDA require bottled water companies to disclose test results for *E. coli* in source water and/or finished bottled water products to the

public. One comment stated that the FDA rule should include a provision for public notification as found in EPA tap water regulations, which require PWSs that use ground water to notify the public if monitoring samples test positive for a fecal indicator or if the appropriate water protection measures have not been taken in a timely manner.

(Response) FDA disagrees that it should require companies to routinely disclose test results for *E. coli* in source water and finished products to the public. Routine public disclosure of source water testing results is not necessary because source water containing *E. coli* will not be considered to be of a safe, sanitary quality under revised § 129.35(a)(3)(i) and thus will be prohibited from use in the production of bottled water under § 129.35(a)(1).

Likewise, routine public disclosure of test results for *E. coli* in finished bottled water products is not necessary because bottled water products that test positive for the fecal indicator *E. coli* are deemed adulterated under new § 165.110(b)(2)(i)(B) and revised § 165.110(d). Adulterated products cannot be introduced or delivered for introduction into interstate commerce under section 301 of the act (21 U.S.C. 331), and FDA may take enforcement action against adulterated products, including pursuing product seizure (section 304 of the act (21 U.S.C. 334)). In addition, FDA notes that its recall guidance in 21 CFR part 7 includes recommendations for public communication of recalls. Therefore, the new regulations are sufficient to ensure the safety of bottled water products, with regard to the presence of fecal contamination, without requiring routine public disclosure of testing results. Accordingly, FDA is not making any changes in response to this comment to require routine public disclosure of monitoring results.

(Comment 13) One comment requested that FDA limit the applicability of the proposed rule to bottled water manufacturers that use ground water, noting that FDA modeled its proposed rule after the EPA GWR, which expressly limits its application to PWSs that use ground water. The comment also states that if FDA intends to regulate manufacturers that use surface water, it should adopt the analogous provisions of EPA's regulations in 40 CFR part 141, subparts C and H, which were designed specifically for surface water PWSs, and which are based on filtration and disinfection requirements rather than FDA's proposed requirements for an *E. coli*-free source and regular source testing. This comment also stated that source testing and corrective action should not be required for manufacturers that use surface water, since EPA does not impose these requirements on surface water PWSs. As further support for its position, the comment argued that these requirements are not necessary for manufacturers that use surface water because *E. coli* are removed during treatment processes such that the amount of coliform in the source has no bearing on the final product. The comment also stated that the imposition of the corrective action requirements in this rule on any ''source,'' regardless of origin, would unfairly force manufacturers that use surface water to either shut down their intakes and undertake the impossible task of eliminating *E. coli* that is going to be eliminated anyway during treatment or, alternatively, purchase water from PWSs.

(Response) FDA disagrees with the comment that it should apply this rule specifically to bottled water manufacturers that use ground water, that any FDA requirements for bottled water manufacturers that use surface water should be modeled after EPA's regulations for surface water PWSs, and that FDA should not adopt its own source and testing requirements for bottled water because EPA has different requirements for surface water PWSs. The application of this rule to all bottled water manufacturers is consistent with the adulteration provisions in section 402(a)(3) and (a)(4) of the act and with FDA's obligations under section 410 of the act. Specifically, under section 410(b)(1) of the act, FDA is required to respond to EPA's issuance of an NPDWR for a contaminant in drinking water by issuing a standard of quality regulation for that contaminant in bottled water, or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in PWSs but not in water used for bottled water. Section 410(a)(b)(2) of the act also provides that a standard of quality regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water.

In this rule, FDA is responding to an EPA NPDWR on fecal contamination in ground water. Fecal contamination can be found in surface water as well as ground water. Therefore, FDA believes that it is appropriate for it to respond to EPA's issuance of a NPDWR on fecal contamination in GWSs by establishing a regulation that will apply to all manufacturers of bottled water. As FDA explained in the proposed rule, ''[T]he potential for fecal contamination addressed in the EPA GWR also exists for ground water sources used for bottled water. The potential also exists for bottled water products from ground water sources to be contaminated during processing and for bottled water products from other sources to be contaminated from source water or during processing. Therefore, FDA is proposing to require that source water currently subject to weekly microbiological testing be analyzed specifically for total coliform * * *.'' (73 FR 53775 at 53779 through 53780). FDA notes that this rule is consistent with its regulatory approach, which has not been to establish separate regulations for ground water and surface water sources under parts 129 and 165.

In response to the comment's contention that the microbiological source testing and rectification requirements of this rule are not necessary for manufacturers that use surface water because microbiological contaminants are removed during treatment processes, FDA emphasizes that all bottled water products are subject to existing requirements related to the water supply. FDA's CGMP regulations for bottled water define ''an approved source'' as ''a source of water and the water therefrom * * * that has been inspected and the water sampled, analyzed, and found to be of a safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction'' (§ 129.3(a)). The CGMP regulations require that the product water supply be of a ''safe, sanitary quality'' (§ 129.35(a)(1)). FDA does not consider source water containing *E. coli* to be of a safe and sanitary quality. The CGMP regulations also require at least weekly microbiological testing under § 129.35(a)(3)(i) for source water obtained from other than a PWS. Therefore, sources other than PWSs that have not been sampled and analyzed for microbiological contaminants are not in compliance with FDA's CGMP regulations for source water.

One existing exemption to the microbiological testing requirement is for source water from PWSs. As explained in the final rule establishing this exemption, PWSs are subject to EPA regulations to ensure the safety of public drinking water, including water from surface sources (60 FR 57076 at 57111). In this case, FDA considers the source water for bottling to be the treated water from the PWS, not the original surface water source from which the PWS drew its water. Therefore, this rule's requirement for coliform and, potentially, *E. coli* testing

of source water does not apply to manufacturers that obtain their source water from PWSs that use surface water.

In response to concerns regarding the rule's impact on manufacturers that use surface water, FDA noted in the proposed rule that 70 to 75 percent of bottled water manufacturers use ground water (73 FR 53775 at 53779). FDA believes that the vast majority of the remaining manufacturers obtain their source water from PWSs, rather than from surface water sources, based on information provided by industry (66 FR 35439 at 35440 through 35441, July 5, 2001). FDA also notes that this comment did not provide any specific information identifying manufacturers using surface water that might be affected by the rule. For these reasons, FDA is unaware of evidence of any bottled water manufacturers using surface water directly from a surface water source that would be negatively affected by this rule, e.g., manufacturers using sources that are potentially contaminated with *E. coli*.

For the reasons summarized above, FDA is not making changes to the final rule in response to this comment.

III. Conclusion

The comments to the September 17, 2008, proposal (73 FR 53775) supported most of the provisions that FDA is adopting in this final rule. After review and consideration of the comments received in response to the September 17, 2008, proposal, FDA concludes that it should amend part 129 and part 165 as set forth in the proposed rule but with the specific modifications to the proposed regulation discussed in this document. For the purposes of this final rule, certain changes, in addition to those discussed in this document, were made for editorial purposes, clarity, and consistency only. These changes do not modify any matter of substance.

Therefore, FDA is amending parts 129 and 165 to provide the following:

- Bottled water manufacturers that obtain their source water from other than a PWS must test their source water at least weekly for total coliform, and if that source water is total coliform positive, must conduct follow-up testing to determine whether any of the coliform organisms are *E. coli* (§ 129.35(a)(3)(i));
- Source water found to contain *E. coli* will not be considered water of a safe, sanitary quality as required for use in bottled water by § 129.35(a)(1) (§ 129.35(a)(3)(i));
- Before a bottler can use source water from a source that has tested positive for *E. coli*, the bottler must take appropriate measures to rectify or otherwise eliminate the cause of *E. coli* contamination of that source in a manner sufficient to prevent its reoccurrence. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site that originally tested positive for *E. coli* are tested and found to be *E. coli* negative (§ 129.35(a)(3)(i));
- Bottlers must maintain records of corrective measures taken to rectify or eliminate *E. coli* contamination (§ 129.35(a)(3)(i));
- If any coliform organisms are detected in weekly total coliform testing of finished bottled water, follow-up testing must be conducted to determine whether any of the coliform organisms are *E. coli* (§ 129.80(g)(1));
- Section 402(a)(3) of the act, in addition to section 402(a)(1), may apply as a basis for adulteration (§ 129.35(a)(4)(iv));
- Analyses conducted to determine compliance with the standards for microbiological quality for total coliform and *E. coli* must be made in accordance with the MTF and MF methods (§ 165.110(b)(2)(ii)); and
- If *E. coli* is present in bottled water, then the bottled water is deemed to be adulterated under section 402(a)(3) of the act (§ 165.110(b)(2)(i)(B); § 165.110(d)).

As a result of these amendments to parts 129 and 165, upon the effective date of this final rule, December 1, 2009, any source water containing *E. coli* will not be considered water of a safe, sanitary quality and cannot be used for the production of bottled water. Also, any finished bottled water product that contains *E. coli* is deemed to be adulterated under section 402(a)(3) of the act.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Analysis of Impacts

A. Executive Order 12866 and Regulatory Flexibility Act

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the costs per entity of this rule are small, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

This final economic impact analysis revises the analysis set forth in the proposed rule (73 FR 53775) in response to comments received. Except as indicated below, the analysis in this final rule is the same as the analysis of the proposed rule.

1. Need for Regulation

FDA did not receive any comments on the need for regulation in the analysis of the proposed rule. Under section 410 of the act, FDA is required to respond to the GWR published by EPA by issuing its own standard of quality regulation for bottled water that is no less protective of the public health than the treatment techniques adopted by EPA in the GWR, unless it makes a finding that such additional regulations are not necessary to protect the public health. EPA published the GWR, in part, because data indicated that GWSs are susceptible to fecal contamination. Prior to the GWR, there were no Federal regulations requiring monitoring or disinfection of ground water sources or requiring corrective action when fecal

contamination or a risk of fecal contamination is found. The GWR puts in place a regulatory process, including treatment techniques, to identify and target GWSs that are susceptible to fecal contamination, and to require higher risk GWSs to monitor and, when necessary, take corrective action. As noted previously, if FDA fails to take action within the prescribed time period in response to the GWR, then under section 410(b)(4)(A) of the act, EPA's GWR will apply to bottled water. Further, section 410(b)(2) of the act requires that a standard of quality regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water.

EPA determined that there is the potential for ground water to be contaminated with pathogenic bacteria or viruses, or both, and that the presence of fecal indicators can demonstrate a pathway for pathogenic enteric bacteria and viruses to enter GWSs. Ground water sources supply water for 70 to 75 percent of all U.S. bottled water products (Ref. 2). Based on EPA's findings in the GWR, FDA concludes that the potential for fecal contamination that exists for PWS ground water sources regulated by EPA's GWR also exists for bottled water using ground water sources. The potential also exists for bottled water products from ground water sources to be contaminated during processing and for bottled water products from other sources to be contaminated from source water or during processing.

Dun's Market Identifiers database lists 378 U.S. establishments under North American Industry Classification System (NAICS) code 312112 Bottled Water Manufacturing (69 FR 70082 at 70084, December 2, 2004). These 378 establishments correspond to 318 firms. Because a firm may own more than one establishment and each establishment may be a source, a bottling plant or both, this analysis will assume that each establishment corresponds to one source. Foreign bottled water establishments that produce and export their bottled water products for consumption in the United States will have to meet the same FDA requirements as domestic establishments. FDA is aware of at least 35 major brands of bottled water that are imported into the United States. When sales of a particular brand constitute a significant portion of the market share for this industry, then the brand is considered a major brand. If each imported brand corresponds to one foreign establishment, then an additional 35 foreign establishments will also be affected, giving a total of 413 establishments covered by this rule (Ref. 3). Because FDA assumes that each establishment is equivalent to a single water source, we estimate that 413 bottlers, both domestic and foreign, will be covered by this regulation. FDA received no comments on these estimates. However, in response to a comment on sampling after an *E. coli* positive, FDA noted that in some cases, bottlers may have more than one sampling site at a source or may combine water from more than one source for bottling. Because none of the comments provided information regarding the possible number of sources per bottler, for purposes of this analysis, FDA maintains in this final rule the one source to one establishment correspondence used in the cost estimates of the proposed rule.

2. Regulatory Options

FDA evaluated three regulatory options in the analysis of this rule:

Option 1. Take no action. If FDA fails to issue a standard of quality regulation or make a finding that such a regulation is not necessary to protect the public health, then EPA's GWR will apply to bottled water.

Option 2. Issue the regulations, as outlined in Option 3, but remove the existing exemption for weekly microbiological testing of source water from PWSs.

Option 3. Issue the regulations in this final rule. FDA is requiring that source water currently subject to weekly microbiological testing be analyzed specifically for total coliform and if any coliform organisms are detected in source water or in finished bottled water products, then bottled water manufacturers will be required to test for *E. coli*. Source water containing *E. coli* will not be considered to be of a safe, sanitary quality and will be prohibited from use in the production of bottled water. Before a bottler can use source water from a source that has tested positive for *E. coli*, the bottler must take appropriate measures to rectify or otherwise eliminate the cause of the contamination. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site that originally tested positive for *E. coli* are tested and found to be *E. coli* negative. Finished bottled water products containing *E. coli* will be deemed adulterated.

Several comments recommended that FDA consider an *E. coli* test result to be ''positive'' only if it has been confirmed so it is considered valid. In response, FDA pointed out that the test methods specified in the rule include confirmatory steps.

In evaluating the testing costs of the proposed rule, FDA based its estimates on EPA's GWR estimates for testing costs. At least some of the methods approved by EPA in the GWR include confirmatory testing for the fecal indicator organism. Therefore the costs of confirmatory testing are already included in the overall testing cost estimates used by EPA. Thus, the estimated testing costs in the economic impact analysis of the proposed rule remain the same for the economic impact analysis of this final rule.

Costs and Benefits of Options

Option 1. Take no action. If FDA does not issue a regulation by the statutory deadline, EPA's GWR for drinking water would become applicable to bottled water. EPA's GWR is designed for PWSs, which differ in significant ways from bottled water plants. Some of its provisions, such as those that address public water distribution systems, cannot be applied literally to bottled water plants, which do not have such distribution systems. Accordingly, FDA believes that Option 1 is not efficient and therefore less desirable than the chosen option.

Option 2. Change the testing requirements for source water and finished bottled water products to include total coliform testing of source water for all bottlers (i.e., remove the existing exemption for weekly microbiological testing of source water from PWSs) and require follow-up testing for *E. coli* when total coliform positives occur.

Bottlers that obtain their water from PWSs are not required to conduct microbiological testing of their source water under the CGMPs (§ 129.35(a)(3)(i)). FDA considered removing this exemption. This would have the advantage of requiring all bottlers to conduct the same tests (i.e., to test their source water for total coliform) and to conduct follow-up testing for *E. coli* when total coliform positives occur. However, removing the exemption for weekly microbiological testing of source water would be inefficient because PWSs are already covered by EPA drinking water regulations, including the GWR.

Option 3. FDA's Final Regulatory Action. Each requirement of FDA's regulatory action is evaluated separately in the following order:

1. Require that source water currently subject to weekly microbiological testing be analyzed specifically for total coliform;

2. Require follow-up testing for *E. coli* when total coliform positives occur in source water or finished bottled water products; and

3. Require bottlers, in the event the source water tests positive for *E. coli*, to rectify or otherwise eliminate the cause of contamination of the source, and then subsequently test samples from the same sampling site sufficiently until the source is considered negative for *E. coli*. Finished bottled water products that test positive for *E. coli* will be deemed adulterated.

Option 3 Explained

1. *Require that source water currently subject to weekly microbiological testing be analyzed specifically for total coliform.* The bottled water CGMPs at § 129.35(a)(3)(i) require that bottlers that obtain source water from other than a PWS conduct microbiological tests at least once a week. The CGMPs do not specify what organism to test for or the allowable level of bacterial contamination. FDA is now requiring that bottlers that obtain their water from other than a PWS must test their source water at least once a week for total coliform. FDA expects that most bottlers currently use total coliform testing to conduct these microbiological tests. For example, the Model Code of the International Bottled Water Association (IBWA), a trade association representing a large segment of the bottled water industry, requires total coliform testing of source water (Ref. 4). Furthermore, the 35 foreign producers mentioned in this analysis are members of IBWA. Because microbiological testing is already a requirement of the existing CGMPs and total coliform testing is a widely used test for microbiological quality of water, and because producers are already required to test for total coliform in finished products, FDA expects that the number of establishments affected by this requirement will be negligible and no additional costs are estimated for this provision.

2. *Require follow-up testing for E. coli when total coliform positives occur in source water or finished bottled water products.* As noted previously, FDA is requiring that bottlers that obtain their water from other than a PWS test their source water at least weekly for total coliform. Finished water products are already required to be tested for total coliform under the existing CGMPs. FDA is now requiring that if any coliform organisms are detected in source water or in finished water products, then the bottler must conduct follow-up testing for *E. coli*. The presence of any coliform indicates that the water may contain *E. coli*, an indicator of fecal contamination. Further, FDA agrees with EPA's conclusions that ground water sources may be vulnerable to fecal contamination and that such fecal contamination may pose a threat to health. Because ground water is the source water for approximately 75 percent of U.S. bottled water products, the potential for fecal contamination also exists for ground water sources used for bottled water. The potential also exists for finished bottled water products, whether from ground water sources or from other sources such as PWSs, to be contaminated during processing. FDA has determined that it is appropriate to require *E. coli* testing in response to a total coliform positive finding from weekly source and finished bottled water sampling. In this final rule, FDA estimates the costs of *E. coli* testing resulting from a total coliform positive. The estimated costs are based on the probability that the source water or a finished product will test positive for total coliform during any given year.

3. *Require bottlers, in the event the source water tests positive for E. coli, to rectify or otherwise eliminate the cause of contamination of the source, and then subsequently test samples from the same sampling site sufficiently until the source is considered negative for E. coli. Finished bottled water products that test positive for E. coli will be deemed adulterated.* If source water tests positive for *E. coli*, this cost model assumes that bottlers will respond by taking action to rectify or eliminate the cause of the contamination, by keeping records of those actions, and by subsequently testing samples from the same sampling site sufficiently until the source is considered negative for *E. coli*. The source will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site that originally tested positive for *E. coli* are tested and found to be *E. coli* negative.

Finished bottled water products that test positive for *E. coli* will be deemed adulterated under section 402(a)(3) of the act and revised § 165.110(d) of the regulations. Costs to rectify or otherwise eliminate the cause of contamination in finished bottled water products are not estimated in this analysis.

Per Sample Testing Costs for E. coli

For purposes of this analysis, FDA assumes that 75 percent of domestic bottled water establishments obtain their water directly from sources other than a PWS and that the other 25 percent obtain their water from PWSs (66 FR 35439 at 35440 through 35441). FDA is assuming that all 35 foreign producers that export bottled water to the United States obtain their water from other than a PWS and are currently testing their sources for total coliform. As mentioned previously, FDA assumes that for all domestic and foreign producers, one establishment corresponds to one source. Thus, we estimate that 284 (75 percent) of 378 domestic establishments and all 35 foreign bottled water establishments (284 + 35 = 319) whose products are consumed in the United States obtain their water from other than a PWS. Based on this estimate, we further surmise that all 319 establishments are already conducting total coliform testing of their source water. And approximately 25 percent of the estimated total of 378 domestic bottled water establishments (approximately 95) obtains their water from a PWS.

Table 1 of this document covers *E. coli* testing costs per sample. The estimates of the laboratory fees and testing costs are derived from the GWR (Ref. 5). EPA estimated the national average testing costs per sample for *E. coli* based on 25 to 100 tests conducted annually. The estimated costs per sample can vary depending on whether the test is conducted in-house or at a commercial laboratory.

TABLE 1.—*E. coli* TESTING COSTS PER SAMPLE

Laboratory Type	Hourly Labor Cost	Labor Hours for Sample Collection	Cost of Sample Collection	Labor Hours for Sample Analysis	Analysis Materials	Per Sample Analysis Cost	Total Costs per Sample
In-house	$ 21.44	0.5	$ 10.72	0.5	$ 8.95	$ 19.67	$ 30.39
Commercial	$ 21.44	0.5	$ 10.72	0	$ 74.80	$ 74.80	$ 85.52

For in-house laboratories, the laboratory materials cost per sample is estimated to be $8.95 and the labor cost to be $21.44 for 1 labor hour per sample (one-half hour for collecting and handling the sample and another half hour for conducting the analysis). For an independent commercial laboratory analysis, the test cost per sample would include a shipping and commercial analysis fee of $74.80 and a labor cost of one-half hour to collect the sample and arrange for delivery to the laboratory.

FDA is not aware of how many potentially affected establishments will either use in-house testing facilities or outsource testing to commercial laboratories. For the purpose of this analysis, FDA assumes that all large bottlers will use in-house testing facilities and that either 50 percent (low-cost assumption) or 100 percent (high-cost assumption) of small bottled water establishments will outsource their testing. According to the Small Business Administration's definition of small business for this industry, about 82 percent of bottled water establishments are defined as small (69 FR 70082 at 70088). This may overestimate the number of bottlers that will outsource testing and thus may overestimate the cost of the rule. FDA did not receive any significant comments on this section.

Table 2 of this document shows the breakdown of bottlers by the low-cost and high-cost testing models, based on laboratory choice and an 82-percent small business rate. For the 319 bottlers using other than a PWS source, either 188 bottlers (59 percent) will use in-house testing facilities and 131 bottlers (41 percent) will use commercial laboratories or 57 bottlers (18 percent) will use in-house testing facilities and 262 bottlers (82 percent) will use commercial laboratories. For the 95 bottlers using PWS sources, either 56 bottlers (59 percent) will use in-house testing facilities and 39 bottlers (41 percent) will use commercial laboratories or 17 bottlers (18 percent) will use in-house testing facilities and 78 bottlers (82 percent) will use commercial laboratories.

TABLE 2.—HIGH-COST AND LOW-COST ASSUMPTIONS ABOUT THE NUMBER OF BOTTLED WATER ESTABLISHMENTS USING EITHER IN-HOUSE OR COMMERCIAL LABORATORIES

	Number of Bottlers Using Pther Than a PWS Source		Number of Bottlers Using a PWS Source	
	Low Cost	High Cost	Low Cost	High Cost
In-house laboratory	188 (59%)	57 (18%)	56 (59%)	17 (18%)
Commercial laboratory	131 (41%)	262 (82%)	39 (41%)	78 (82%)
	319	319	95	95

Total Coliform Frequency Estimates

To estimate the number of samples that are likely to test positive for total coliform each year, FDA assumes that the frequency of total coliform positive samples is proportional to EPA's total coliform positive frequency estimates (Ref. 6). FDA did not receive any comments on this section.

EPA's total coliform positive frequency estimates are dependent on the probability of a total coliform positive, which is dependent on the annual number of samples tested, which varies by system size. FDA requirements include at least weekly testing for total coliform in source water and finished products, or at least 52 source water samples and 52 finished product samples per year. For example, bottlers whose source is other than a PWS will have to test their source water at least once a week and also their finished product at least once a week. Bottlers whose source is a PWS are only required to test their finished product. (For this model, FDA assumes that each bottler is testing one type of finished product.) EPA found that the frequency rate for total coliform positives in ground water PWSs testing between 31 and 82 samples for total coliform each year, ranged between 0.22 and 3 samples per year per system (Ref. 6). FDA assumes that the same frequency rates are applicable to bottled water plants testing 52 samples a year, thus the expected annual frequency rate of total coliform positive samples per bottled water source is at most 3 per year. FDA further assumes that the annual frequency of a total coliform positive for finished product testing is also at most three per bottler. For example, bottlers that are conducting total coliform tests for both their source and finished product can expect to find three total coliform positives from their source and three total coliform positives in their finished product or a total of six total coliform positive samples per year. This means that they will need to conduct six tests for *E. coli* in 1 year. Bottlers whose sources are PWSs and are only required to conduct total coliform tests of their finished products can expect three positive samples per year. Combining this information, table 3 of this document shows *E. coli* testing costs for source water and finished bottled water products.

TABLE 3.—COSTS OF TESTING SOURCE WATER AND FINISHED BOTTLED WATER PRODUCTS FOR *E. coli*[1]

	A	B	C	(A X B X 6) + (A X C X 3)
	Cost per Sample	Number of Bottlers Testing Both Source Water and Finished Product (Six Tests/Year)	Number of Bottlers Testing Only Finished Product (Three Tests/Year)	Total Annual Costs of *E. coli* Testing
Low-cost assumption				
In-house laboratory	$30	188	56	$39,000
Commercial laboratory	$86	131	39	$77,000
Total low-cost assumption				$116,000

TABLE 3.—COSTS OF TESTING SOURCE WATER AND FINISHED BOTTLED WATER PRODUCTS FOR *E. coli*[1]—Continued

	A	B	C	(A X B X 6) + (A X C X 3)
	Cost per Sample	Number of Bottlers Testing Both Source Water and Finished Product (Six Tests/Year)	Number of Bottlers Testing Only Finished Product (Three Tests/Year)	Total Annual Costs of *E. coli* Testing
High-cost assumption				
In-house laboratory	$30	57	17	$12,000
Commercial laboratory	$86	262	78	$154,000
Total high-cost assumption				$166,000

[1] Estimates are not exact due to rounding.

Source water that tests positive for *E. coli* will not be considered to be of a safe and sanitary quality for bottling, as required in § 129.35(a)(1), and finished products that test positive for *E. coli* will be considered adulterated under section 402(a)(3) of the act and revised § 165.110(d) of the regulations.

A bottler could not use source water from a source found to contain *E. coli* for production of bottled water until the bottler has rectified or otherwise eliminated the cause of the contamination of the source, and has subsequently sufficiently tested samples from the same sampling site until the source can be considered negative for *E. coli*. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site that originally tested positive for *E. coli* are tested and found to be *E. coli* negative.

This cost model assumes that bottlers will take action to rectify or eliminate the cause of contamination based on the first positive *E. coli* sample. Thus, the estimated number of bottlers that will find an *E. coli* positive sample per year will be equal to the estimated number of bottlers that will take action to rectify contamination each year. To estimate the number of establishments that are likely to take action to rectify contamination, FDA relied on EPA's estimate of the percentage of PWSs that use ground water sources with identified deficiencies (Ref. 7). EPA's estimate in turn was based on survey data from the Association of State Drinking Water Administrators (ASDWA 1997). FDA lacks better or more recent data. Establishments that have significant deficiencies or that detect fecal contamination are required to take corrective actions under the GWR. The survey responses indicated that 17 percent of systems had wells that were not constructed according to State regulations. FDA uses this percentage as an estimate of the number of systems that will have an *E. coli* positive result in source or product water over a 25-year period. EPA's cost model assumes deficiencies occur equally beginning in year 4 through 25 (22 years) of the analysis, which translates into 0.77 percent of all GWSs taking a corrective action each year over a 22-year period. Thus, of the 319 bottling establishments that use sources other than PWSs, about 53 (17 percent) are likely to take corrective action as a result of an *E. coli* finding in a 22-year period. This translates to 2.5 bottlers every year. For its analysis, FDA also assumes that each of these 2.5 bottlers will incur an *E. coli* positive finding only once in a given year. Table 4 of this document summarizes these estimates.

TABLE 4.—NUMBER OF BOTTLERS THAT INCUR AN *E. coli* POSITIVE IN SOURCE WATER AND MUST RECTIFY CONTAMINATION

Number of bottlers that use sources other than a PWS	319
Fraction of bottlers with potential source water contamination (17 percent/22 years)	0.0077
Number of bottlers that must rectify contamination each year over a 22-year period	2.5

As stated earlier, a source will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site that originally tested positive for *E. coli* are tested and found to be negative. Therefore the number of bottlers that will test five more source samples after taking some type of action to rectify contamination is also 2.5. Assuming this secondary testing is conducted in-house or in a commercial laboratory, total annual costs of testing five additional samples for *E. coli* is estimated to be either $380 or $1,069 per year. Table 5 of this document summarizes these estimates.

TABLE 5.—TOTAL ANNUAL COSTS OF TESTING FIVE MORE SAMPLES FOR *E. coli* AFTER A POSITIVE FINDING[1]

	A	B	A X B X 5
	Cost per Sample	Number of Bottlers Testing Source Water	Total Annual Costs of Testing Five Samples for *E. coli*
In-house laboratory	$30	2.5	$380
Commercial laboratory	$86	2.5	$1,069

[1] Estimates are not exact due to rounding.

Costs to Rectify Contaminated Sources

As noted previously, FDA requires bottlers to rectify or otherwise eliminate the cause of contamination of a source before source water can be used from that source. FDA drew on EPA's Economic Impact Analysis of the GWR to provide estimates for costs of rectifying or eliminating contamination.

EPA estimated costs using a high- and low-cost distribution. The low-cost scenario assumes a greater percentage (60 percent) of systems with significant deficiencies will have less expensive (low-cost) deficiencies to correct. The high-cost scenario assumes a greater percentage of systems will have more expensive (high-cost) deficiencies to correct. EPA provides examples of a low-cost deficiency (replacing a sanitary well seal) and a high-cost deficiency (rehabilitating an existing well) (Ref. 7). Unit costs for these repairs are based on the Technology and Cost Documents for the Final GWR (Ref. 8) and appear here in table 6 of this document. EPA expects that the costs of these significant deficiencies represent the range of costs that establishments would be expected to incur although there are many other corrective actions that could be taken. For example, drilling a new well or purchasing water from a different supplier could be done but in most cases would probably be more expensive than the options listed earlier.

Based on EPA's assumptions, FDA estimates one-time costs to bottlers of rectifying contamination range from approximately $17,000 to $22,000 each year.

TABLE 6.—ESTIMATED ANNUAL COSTS OF RECTIFYING CONTAMINATED SOURCES[1]

Action	Unit Cost	Distribution of Actions	Number of Bottlers That Will Rectify a Contaminated Source Each Year	Total Annual Costs of Rectifying Contaminated Sources
Replace a sanitary well seal	$3,627	.60	2.5	$5,441
Rehabilitate an existing well	$11,986	.40	2.5	$11,986
Total costs assuming a low-cost distribution (rounding up)				$17,427
Replace a sanitary well seal	$3,627	.40	2.5	$3,627
Rehabilitate an existing well	$11,986	.60	2.5	$17,979
Total costs assuming a high-cost distribution (rounding up)				$21,606

[1] Estimates are not exact due to rounding.

Based on discussions with experts, EPA suggests that still other corrective actions such as fencing off or limiting access to protective wells could actually cost less than the two options listed previously from their model (Ref. 7).

In addition to the costs of a sanitary well or the costs of rehabilitating an existing well, other potential costs could include product loss, temporarily shutting down the operation, or changing to an alternate source. FDA did not receive any comments on this section.

Recordkeeping Costs

Under this final rule, those bottlers that are required to test their source water and finished bottled water products at least weekly for total coliform (and for *E. coli* if any coliform organisms are detected) will be required to maintain records of the microbiological test results and corrective measures taken in response to a finding of *E. coli* for at least 2 years under revised § 129.35(a)(3)(i), as well as current § 129.80(g) and (h) of the CGMP regulations. The existing CGMP regulations already reflect the time and associated recordkeeping costs for those bottlers that are required to conduct microbiological testing of their source water, as well as total coliform testing of their finished bottled water products. FDA concludes that any additional costs in recordkeeping based on the new testing requirements for source water and finished bottled water products would be negligible.

Summary of Costs

Total costs for this final rule, including the estimated annual costs for *E. coli* testing and for rectifying contaminated sources, are shown in tables 7 through 11 of this document. Annual testing costs are estimated as either low or high costs depending on the number of bottlers that use either in-house testing laboratories or outsource testing to commercial laboratories. Costs of rectifying contaminated sources are estimated using the low- and high-cost distribution from EPA's Economic Impact Analysis of the GWR.

FDA estimates that 95 establishments that use PWSs are likely to find a total coliform positive three times a year in their finished product and thus will incur testing costs for *E. coli* three times a year as shown in table 7 of this document. Of the 95 bottlers that use PWS sources in table 7, either 56 bottlers (59 percent) will use in-house testing facilities at $30 per sample and 39 bottlers (41 percent) will use commercial laboratories at $86 per sample totaling approximately $15,000 under the low-cost assumption, or about 17 bottlers (18 percent) will use in-house testing facilities at $30 per sample and 78 bottlers (82 percent) will use commercial laboratories at $86 per sample costing about $21,000 under the high-cost assumption.

TABLE 7.—ESTIMATED TOTAL ANNUAL AND DISCOUNTED *E. coli* TESTING COSTS TO BOTTLERS THAT USE PWSS[1]

Total *E. coli* Testing Costs	Annual Costs	Discounted Costs (20 years at 7 percent)
Number of bottlers with PWS source = 95		
Total cost of finished product testing (low-cost assumption)	$15,000	$160,000

TABLE 7.—ESTIMATED TOTAL ANNUAL AND DISCOUNTED *E. coli* TESTING COSTS TO BOTTLERS THAT USE PWSS[1]—Continued

Total *E. coli* Testing Costs	Annual Costs	Discounted Costs (20 years at 7 percent)
Total cost of finished product testing (high-cost assumption)	$21,000	$230,000

[1] Estimates are not exact due to rounding.

FDA estimates that 319 establishments that use sources other than PWSs are likely to find a total coliform positive about six times a year (three times in their source and three times in their finished product) and therefore, will incur testing costs for *E. coli* six times a year as shown in table 8 of this document. Of the 319 bottlers that obtain their water from other than a PWS, 188 bottlers (59 percent) will use in-house testing facilities at $30 per sample and 131 bottlers (41 percent) will use commercial laboratories at $86 per sample totaling approximately $101,000 under the low-cost assumption, and about 57 bottlers (18 percent) will use in-house testing facilities at $30 per sample and 262 bottlers (82 percent) will use commercial laboratories at $86 per sample costing about $145,000 under the high-cost assumption.

TABLE 8.—ESTIMATED TOTAL ANNUAL AND DISCOUNTED *E. coli* TESTING COSTS TO BOTTLERS THAT USE SOURCES OTHER THAN PWSS[1]

E. coli Testing Costs	Annual Costs	Discounted Costs (20 years at 7 percent)
Number of Bottlers = 319		
Total costs of source and finished product testing (low-cost assumption)	$101,000	$1 million
Total costs of source and finished product testing (high-cost assumption)	$145,000	$1.5 million

[1] Estimates are not exact due to rounding.

Of the 319 establishments that obtain their water from other than a PWS, it is likely that 2.5 establishments will test positive for *E. coli* annually over 22 years and may need to take corrective action and conduct secondary testing. Estimated costs to rectify the cause of contamination using low- and high-cost assumptions appear in table 9 of this document.

TABLE 9.—ESTIMATED TOTAL ANNUAL AND DISCOUNTED COSTS TO RECTIFY CONTAMINATION[1]

Costs to Rectify Contamination	Annual Costs	Discounted Costs (20 years at 7 percent)
Number of bottlers = 2.5		
Total costs to rectify contamination (low cost)	$17,000	$ 185,000
Total costs to rectify contamination (high cost)	$22,000	$ 230,000

[1] Estimates are not exact due to rounding.

Secondary testing costs are shown in table 10 of this document and illustrate costs for bottlers that will use either in-house or commercial laboratories.

TABLE 10.—ESTIMATED TOTAL ANNUAL AND DISCOUNTED SECONDARY TESTING COSTS FOR *E. coli*

Testing Costs	Annual Costs	Discounted Costs (20 years at 7 percent)
Number of bottlers	2.5	2.5
Total costs of five additional tests if using in-house laboratory	$380	$4,000
Total costs of five additional tests if using commercial laboratory	$1,069	$11,000

Table 11 of this document shows the estimated total annual costs of this final rule (Option 3) by adding tables 7, 8, 9, and 10 to be $134,000 (low cost) and $189,000 (high cost). The estimated total discounted or present value costs (using a 7-percent interest rate over a 20-year period) are $1.4 million (low) and $1.9 million (high).

TABLE 11.—ESTIMATED TOTAL ANNUAL AND DISCOUNTED COSTS OF FINAL RULE

	Total Annual Costs of Final Rule	Total Discounted Costs of Final Rule (20 years at 7 percent)
Low cost	$134,000	$1.4 million
High cost	$189,000	$1.9 million

Benefits

FDA is not aware of any outbreaks or enforcement actions associated with fecal pathogens in bottled water in the United States in the last 10 years. Therefore, we are not able to quantify any public health benefits of this option.

However, while FDA is not aware of any recent outbreaks associated with fecal pathogens in bottled water, this does not mean that such outbreaks could never occur. Under the current FDA regulations, the potential exists for fecal pathogens in ground water to be undetected and be distributed to consumers in bottled water and cause illness. Testing for the fecal indicator *E. coli*, if total coliform is present, and prohibiting *E. coli*-contaminated water from being used as source water or product water, would reduce this potential.

By issuing this regulation, FDA will ensure that FDA's standards for the minimum quality of bottled water, as affected by fecal contamination, will be no less protective of the public health than those set by EPA for public drinking water.

B. Small Entity Analysis

FDA examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities. The Small Business Administration's definition of a small business for NAICS code 312112 Bottled Water Manufacturing is an entity with 500 or fewer employees. Under this definition, 82 percent of the bottled water firms (260 of 318) in the Dun's Market Identifiers database are identified as small firms (69 FR 70082 at 70088). Assuming that 82 percent of total annual costs shown in table 11 of this document will be incurred by small firms, and that 92 percent of the small firms are domestic, then total annual domestic costs of $100,000 to $140,000 will be incurred by the 260 small firms. However, because it is possible that a firm may not find a total coliform positive in any year during a 20-year period, subsequent testing for *E. coli* or taking action to rectify contamination would not be needed and thus, average estimated annual costs per firm can be as low as $380. Average estimated annual costs per firm can be as high as $540 because it is also possible for a firm to incur costs to rectify contamination in any given year over a 20-year period as a result of finding total coliform and *E. coli* positives. This rule will affect a substantial number of small bottled water manufacturers. Although the number of small bottlers affected is large, the average annual costs per business are small. The annual average cost per small bottler (weighted by requirement costs) is summarized in table 12 of this document.

TABLE 12.—WEIGHTED AVERAGE ANNUAL COSTS PER SMALL ENTITY

Annual Costs per Requirement	Weighted Average Annual Costs per Entity	
	Low Cost	High Cost
Number of small firms = 260		
E. coli testing of source water and finished products	$285	$407
E. coli testing finished products only	$50	$70
E. coli secondary testing	$1	$3
Costs to rectify contamination	$50	$60
Average costs per bottler	$380	$540

To investigate the potential significance of these impacts, FDA entered these costs into a model created under contract by the Eastern Research Group (ERG) (Ref. 9). The model is designed to estimate the percentage of small firms that would go out of business because of compliance costs if those costs accrued to all small firms in a given industry. According to this model, an annual cost of $380 to $540 would generate a near zero percent probability that a small firm with less than 20 employees that faced those costs would go out of business. Because the costs per entity of this rule are small, the agency concludes that this final rule will not have a significant economic impact on a substantial number of small entities. FDA did not receive any comments on this section.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Comments on the information collection provisions of this final rule are being solicited in a separate notice published elsewhere in this issue of the **Federal Register**. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

VII. Federalism[3]

FDA has analyzed this rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive Order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.''

Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a) of the act provides that: ''* * * no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g) * * *.'' FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)).

FDA has determined that the revisions to the standard of quality for bottled water relating to microbiological quality (§ 165.110(b)(2)) will have a preemptive effect on State law. Although this rule has a preemptive effect in that it will preclude States from issuing requirements for microbiological testing in bottled water that are not identical to the requirements for microbiological testing in bottled water as set forth in this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act. Section 403A(a)(1) of the act displaces both State legislative requirements and State common law duties (*Riegel* v. *Medtronic*, 128 S. Ct. 999 (2008)).

VIII. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified all Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Bacteriological Analytical Manual (BAM) Online. September 2002. Chapter 4: Enumeration of *Escherichia coli* and the Coliform Bacteria. Accessed online at *http://www.cfsan.fda.gov/~ebam/bam-4.html*.

2. International Bottled Water Association, 2007. Personal communication. August 30, 2007.

3. Skipton, Hay, Albrecht, ''Drinking Water: Bottled or Tap?'' University of Nebraska of Nebraska-Lincoln, Institute of Agriculture and Natural Resources, G1448, January 2002. Accessed online at *http://www.ianrpubs.unl.edu/epublic/live/g1448/build/g1448.pdf*.

4. International Bottled Water Association, 2005, IBWA Model Code, Version March 2005. Accessed online at *http://www.bottledwater.org/public/pdf/IBWA05ModelCode_Mar2.pdf*.

5. Economic Analysis for the Final Groundwater Rule. Office of Water (4606–M) EPA 815–R–06–014 October 2006. Section 6.2.2 Laboratory Fees. Accessed online at: *http://www.epa.gov/safewater/disinfection/gwr/pdfs/support_gwr_economicanalysis.pdf*.

6. Economic Analysis for the Final Groundwater Rule. Office of Water (4606–M) EPA 815–R–06–014 October 2006. Section 4.2.7 Triggered Monitoring Baseline. p. 4–21 and 4–22. Accessed online at *http://www.epa.gov/safewater/disinfection/gwr/pdfs/support_gwr_economicanalysis.pdf*.

7. Economic Analysis for the Final Groundwater Rule. Office of Water (4606–M) EPA 815–R–06–014 October 2006. Section 6.4.4 Sanitary Survey Corrective Actions. p. 6–33. Accessed online at *http://www.epa.gov/safewater/disinfection/gwr/pdfs/support_gwr_economicanalysis.pdf*.

8. Technology and Cost Document for the Final Ground Water Rule. Office of Water (4606–M) EPA 815–R–06–015 October 2006. Section 5.3.1 Significant Deficiency Corrective Actions. p. 5–11. Accessed online at *http://www.epa.gov/safewater/disinfection/gwr/pdfs/support_gwr_cost-technologies.pdf*.

9. Eastern Research Group, Inc., ''Model for Estimating the Impacts of Regulatory Costs on the Survival of Small Businesses and its Application to Four FDA-Regulated Industries,'' Contract No. 223–01–2461, June 7, 2002.

List of Subjects

21 CFR Part 129

Beverages, Bottled water, Food packaging, Reporting and recordkeeping requirements.

21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 129 and 165 are amended as follows:

PART 129—PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER

■ 1. The authority citation for 21 CFR part 129 continues to read as follows:

Authority: 21 U.S.C. 342, 348, 371, 374; 42 U.S.C. 264.

■ 2. Section 129.35 is amended by revising paragraphs (a)(3)(i) and (a)(4)(iv) to read as follows:

§ 129.35 Sanitary facilities.

* * * * *

(a) * * *

(3) * * *

(i) Samples of source water from each source in use by the plant are to be taken and analyzed by the plant as often as necessary, but at a minimum frequency of once each year for chemical contaminants and once every 4 years for radiological contaminants. Additionally, source water obtained from other than a public water system is to be sampled and analyzed for total coliform at least once each week. If any coliform organisms are detected, follow-up testing must be conducted to determine whether any of the coliform organisms are *Escherichia coli*. This sampling is in addition to any performed by government agencies having jurisdiction. Source water found to contain *E. coli* is not considered water of a safe, sanitary quality as required for use in bottled water by paragraph (a)(1) of this section. Before a bottler can use source water from a source that has tested positive for *E. coli*, the bottler must take appropriate measures to rectify or otherwise eliminate the cause of *E. coli* contamination of that source in a manner sufficient to prevent its reoccurrence. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site that originally tested positive for *E. coli* are tested and found to be *E. coli* negative. Records of approval of the source water by government agencies having jurisdiction, records of sampling and analyses for which the plant is responsible, and records describing corrective measures taken in response to a finding of *E. coli* are to be maintained on file at the plant.

* * * * *

(4) * * *

(iv) The finished bottled water must comply with bottled water quality standards (§ 165.110(b) of this chapter) and section 402(a)(1) and (a)(3) of the

[3] As stated in the Background section of this document, if FDA fails to take action within the prescribed time period in response to the NPDWR issued by EPA, EPA's NPDWR will apply to bottled water. On May 20, 2009, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies on preemption. FDA will analyze this rule in light of the President's Memorandum and will amend the rule if needed to reflect the express preemption provision in section 403A(a) of the act.

Federal Food, Drug, and Cosmetic Act dealing with adulterated foods.

* * * * *

■ 3. Section 129.80 is amended by revising paragraph (g)(1) to read as follows:

§ 129.80 Processes and controls.

* * * * *

(g) * * *

(1) For bacteriological purposes, take and analyze at least once a week for total coliform a representative sample from a batch or segment of a continuous production run for each type of bottled drinking water produced during a day's production. The representative sample shall consist of primary containers of product or unit packages of product. If any coliform organisms are detected, follow-up testing must be conducted to determine whether any of the coliform organisms are *E. coli*.

* * * * *

PART 165—BEVERAGES

■ 4. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

■ 5. Section 165.110 is amended by revising paragraphs (b)(2), (b)(3) introductory text, (c)(1), and (d) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(2) *Microbiological quality.* (i) Bottled water shall, when a sample consisting of analytical units of equal volume is examined by the methods described in paragraph (b)(2)(ii) of this section, meet the following standards of microbiological quality:

(A) *Total coliform—*(*1*) *Multiple-tube fermentation (MTF) method.* Not more than one of the analytical units in the sample shall have a most probable number (MPN) of 2.2 or more coliform organisms per 100 milliliters and no analytical unit shall have an MPN of 9.2 or more coliform organisms per 100 milliliters; or

(*2*) *Membrane filter (MF) method.* Not more than one of the analytical units in the sample shall have 4.0 or more coliform organisms per 100 milliliters and the arithmetic mean of the coliform density of the sample shall not exceed one coliform organism per 100 milliliters.

(B) *E. coli.* If *E. coli* is present, then the bottled water will be deemed adulterated under paragraph (d) of this section.

(ii) Analyses conducted to determine compliance with paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section and § 129.35(a)(3)(i) of this chapter shall be made in accordance with the multiple-tube fermentation (MTF) or the membrane filter (MF) methods described in the applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 21st Ed. (2005), American Public Health Association. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Public Health Association, 800 I St. NW., Washington, DC 20001, 202–777–2742 (APHA). You may inspect a copy at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2163, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(3) *Physical quality.* Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of ''Standard Methods for the Examination of Water and Wastewater,'' 15th Ed. (1980), American Public Health Association, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (copies may be obtained from the American Public Health Association, 800 I St. NW., Washington, DC 20001, 202–777–2742 (APHA), or a copy may be examined at the National Archives and Records Administration (NARA), or at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2163, 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*), meet the following standards of physical quality:

* * * * *

(c) *Label statements.* * * *

(1) ''Contains Excessive Bacteria'' if the bottled water fails to meet the requirements of paragraph (b)(2)(i)(A) of this section.

* * * * *

(d) *Adulteration.* Bottled water containing a substance at a level considered injurious to health under section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act), or that consists in whole or in part of any filthy, putrid, or decomposed substance, or that is otherwise unfit for food under section 402(a)(3) of the act is deemed to be adulterated, regardless of whether or not the water bears a label statement of substandard quality prescribed by paragraph (c) of this section. If *E. coli* is present in bottled water, then the bottled water will be deemed adulterated under section 402(a)(3) of the act.

Dated: May 21, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12494 Filed 5–26–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0391]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor from May 2009 through June 2009. This action is necessary protect vessels and people from the hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the security zone without the permission of the Captain of the Port Lake Michigan Zone.

DATES: The regulations in § 165.931 will be enforced from May 23, until June 27, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM2 Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154, e-mail *adam.d.kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL in 33 CFR 165.931 for the following events during the dates and times indicated below:

(1) *Navy Pier Sunday Fireworks;* on May 24, 2009 from 9:15 p.m. through 9:45 p.m.

(2) *Navy Pier Wednesday Fireworks;* on May 27, 2009 from 9:15 p.m. through 9:45 p.m.; on June 3, 2009 from 9:15

p.m. through 9:45 p.m.; on June 10, 2009 from 9:15 p.m. through 9:45 p.m.; on June 17, 2009 from 9:15 p.m. through 9:45 p.m.; on June 24, 2009 from 9:15 p.m. through 9:45 p.m.

(3) *Navy Pier Saturday Fireworks;* on May 23, 2009 from 10 p.m. through 10:40 p.m.; on May 30, 2009 from 10 p.m. through 10:40 p.m.; on June 6, 2009 from 10 p.m. through 10:40 p.m.; on June 13, 2009 from 10 p.m. through 10:40 p.m.; on June 20, 2009 from 10 p.m. through 10:40 p.m.; on June 27, 2009 from 10 p.m. through 10:40 p.m.

All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL. (published on June 13, 2007 at 72 FR 32520) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will also issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM.

Dated: May 14, 2009.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9–12602 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2002–0071; FRL–8910–5]

RIN 2060–AP13

Update of Continuous Instrumental Test Methods; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published a final rule in the **Federal Register** on May 22, 2008, that made technical corrections to five test methods. Inadvertent printing errors were made in the publication. Text insertions were misplaced, duplicate insertions were made, and the definition for system bias was inadvertently revised. The purpose of this action is to correct these errors.

DATES: This correction is effective on June 29, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Foston Curtis, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–1063; fax number (919) 541–0516; e-mail address: *curtis.foston@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Amendment

EPA promulgated revisions to continuous instrumental test methods on May 22, 2008, where a number of technical amendments were made to five test methods. Several of the revisions were added to the text in the wrong places and in some cases duplicate insertions were made. The definition for system bias was also inadvertently revised. This action corrects those publication errors.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the Agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment because only simple publication errors are being corrected that do not substantially change the Agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B). (*See also* the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 307(d)(1), indicating that the good cause provisions in subsection 553(b) of the APA continue to apply to this type of rulemaking under section 307(d) of the CAA.

II. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the APA or any other statute (*see* Section II), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4]. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

This action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). This correction also is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because it is not economically significant.

This technical correction does not involve changes to the technical standards related to test methods or monitoring requirements; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

This technical correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 U.S. Section 808 allows the issuing Agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This

determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 29, 2009. The EPA will submit a report containing this final 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 this action in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective June 29, 2009.

This technical correction does not have substantial direct effects on the States, or on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999).

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 22, 2009.

Lisa P. Jackson,

Administrator.

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

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Appendix A–2— [Amended]

■ 2. Method 3A is amended by revising Section 7.1 to read as follows:

Method 3A—Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

7.1 *Calibration Gas.* What calibration gasses do I need? Refer to Section 7.1 of Method 7E for the calibration gas requirements. Example calibration gas mixtures are listed below. Precleaned or scrubbed air may be used for the O_2 high-calibration gas provided it does not contain other gases that interfere with the O_2 measurement.

(a) CO_2 in nitrogen (N_2).
(b) CO_2 in air.
(c) CO_2/SO_2 gas mixture in N_2.
(d) O_2/SO_2 gas mixture in N_2.
(e) $O_2/CO_2/SO_2$ gas mixture in N_2.
(f) CO_2/NO_X gas mixture in N_2.
(g) $CO_2/SO_2/NO_X$ gas mixture in N_2.

The tests for analyzer calibration error and system bias require high-, mid-, and low-level gases.

* * * * *

Appendix A–4— [Amended]

■ 3. Method 7E is amended as follows:
■ a. By revising section 3.12.
■ b. By revising section 3.16.
■ c. By revising section 7.1.
■ d. By revising section 8.1.2.
■ e. By revising section 8.2.1.
■ f. By revising section 8.2.4.
■ g. By revising the Summary Table of QA/QC in Section 9.0.
■ h. By revising section 12.11.
■ i. By revising section 16.2.2.

Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

3.12 *Low-Concentration Analyzer* means any analyzer that operates with a calibration span of 20 ppm NO_X or lower. Each analyzer model used routinely to measure low NO_X concentrations must pass a manufacturer's stability test (MST). An MST subjects the analyzer to a range of line voltages and temperatures that reflect potential field conditions to demonstrate its stability following procedures similar to those provided in 40 CFR 53.23. Ambient-level analyzers are exempt from the MST requirements of Section 16.3. A copy of this information must be included in each test report. Table 7E–5 lists the criteria to be met.

* * * * *

3.16 *System Bias* means the difference between a calibration gas measured in direct calibration mode and in system calibration mode. System bias is determined before and after each run at the low- and mid- or high-concentration levels. For dilution-type systems, pre- and post-run system calibration error is measured rather than system bias.

* * * * *

7.1 *Calibration Gas.* What calibration gases do I need? Your calibration gas must be NO in N_2 and certified (or recertified) within an uncertainty of 2.0 percent in accordance with ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards'' September 1997, as amended August 25, 1999, EPA–600/R–97/121. Blended gases meeting the Traceability Protocol are allowed if the additional gas components are shown not to interfere with the analysis. If a zero gas is used for the low-level gas, it must meet the requirements under the definition for ''zero air material'' in 40 CFR 72.2. The calibration gas must not be used after its expiration date. Except for applications under part 75 of this chapter, it is acceptable to prepare calibration gas mixtures from EPA Traceability Protocol gases in accordance with Method 205 in appendix M to part 51 of this chapter. For part 75 applications, the use of Method 205 is subject to the approval of the Administrator. The goal and recommendation for selecting calibration gases is to bracket the sample concentrations. The following calibration gas concentrations are required:

* * * * *

8.1.2 *Determination of Stratification.* Perform a stratification test at each test site to determine the appropriate number of sample traverse points. If testing for multiple pollutants or diluents at the same site, a stratification test using only one pollutant or diluent satisfies this requirement. A stratification test is not required for small stacks that are less than 4 inches in diameter. To test for stratification, use a probe of appropriate length to measure the NO_X (or pollutant of interest) concentration at twelve traverse points located according to Table 1–1 or Table 1–2 of Method 1. Alternatively, you may measure at three points on a line passing through the centroidal area. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Sample for a minimum of twice the system response time (see Section 8.2.6) at each traverse point. Calculate the individual point and mean NO_X concentrations. If the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: (a) $\pm$ 5.0 percent of the mean concentration; or (b) $\pm$ 0.5 ppm (whichever is less restrictive), the gas stream is considered unstratified and you may collect samples from a single point that most closely matches the mean. If the 5.0 percent or 0.5 ppm criterion is not met, but the concentration at each traverse point differs from the mean

concentration for all traverse points by no more than: (a) ± 10.0 percent of the mean; or (b) ± 1.0 ppm (whichever is less restrictive), the gas stream is considered to be minimally stratified, and you may take samples from three points. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Alternatively, if a twelve-point stratification test was performed and the emissions were shown to be minimally stratified (all points within ± 10.0 percent of their mean or within ± 1.0 ppm), and if the stack diameter (or equivalent diameter, for a rectangular stack or duct) is greater than 2.4 meters (7.8 ft), then you may use 3-point sampling and locate the three points along the measurement line exhibiting the highest average concentration during the stratification test, at 0.4, 1.0 and 2.0 meters from the stack or duct wall. If the gas stream is found to be stratified because the 10.0 percent or 1.0 ppm criterion for a 3-point test is not met, locate twelve traverse points for the test in accordance with Table 1–1 or Table 1–2 of Method 1.

* * * * *

8.2.1 *Calibration Gas Verification.* How must I verify the concentrations of my calibration gases? Obtain a certificate from the gas manufacturer documenting the quality of the gas. Confirm that the manufacturer certification is complete and current. Ensure that your calibration gas certifications have not expired. This documentation should be available on-site for inspection. To the extent practicable, select a high-level gas concentration that will result in the measured emissions being between 20 and 100 percent of the calibration span.

* * * * *

8.2.4 *NO_2 to NO Conversion Efficiency Test.* Before or after each field test, you must conduct an NO_2 to NO conversion efficiency test if your system converts NO_2 to NO before analyzing for NO_X. You may risk testing multiple facilities before performing this test provided you pass this test at the conclusion of the final facility test. A failed final conversion efficiency test in this case will invalidate all tests performed subsequent to the test in which the converter efficiency test was passed. Follow the procedures in Section 8.2.4.1, or 8.2.4.2. If desired, the converter efficiency factor derived from this test may be used to correct the test results for converter efficiency if the NO_2 fraction in the measured test gas is known. Use Equation 7E–8 in Section 12.8 for this correction.

* * * * *

9.0 *Quality Control* * * *

SUMMARY TABLE OF AQ/QC

Status	Process or element	QA/QC specification	Acceptance criteria	Checking frequency
S	Identify Data User		Regulatory Agency or other primary end user of data.	Before designing test.
S	Analyzer Design	Analyzer resolution or sensitivity.	< 2.0% of full-scale range	Manufacturer design.
M		Interference gas check	Sum of responses ≤ 2.5% of calibration span Alternatively, sum of responses: ≤ 0.5 ppmv for calibration spans of 5 to 10 ppmv. ≤ 0.2 ppmv for calibration spans < 5 ppmv. See Table 7E-3.	
M	Calibration Gases	Traceability protocol (G1, G2).	Valid certificate required Uncertainty ≤ 2.0% of tag value.	
M		High-level gas	Equal to the calibration span	Each test.
M		Mid-level gas	40 to 60% of calibration span	Each test.
M		Low-level gas	< 20% of calibration span	Each test.
S	Data Recorder Design	Data resolution	≤ 0.5% of full-scale range	Manufacturer design.
S	Sample Extraction	Probe material	SS or quartz if stack > 500° F	East test.
M	Sample Extraction	Probe, filter and sample line temperature.	For dry-basis analyzers, keep sample above the dew point by heating, prior to sample conditioning. For wet-basis analyzers, keep sample above dew point at all times, by heating or dilution.	Each run.
S	Sample Extraction	Calibration valve material.	SS	Each test.
S	Sample Extraction	Sample pump material	Inert to sample constituents	Each test.
S	Sample Extraction	Manifolding material	Inert to sample constituents	Each test.
S	Moisture Removal	Equipment efficiency	< 5% target compound removal	Verified through system bias check.
S	Particulate Removal	Filter inertness	Pass system bias check	Each bias check.
M	Analyzer & Calibration Gas Performance.	Analyzer calibration error (of 3-point system calibration error for dilution systems).	Within ± 2.0 percent of the calibration span of the analyzer for the low-, mid-, and high-level calibration gases. Alternative specification: ≤ 0.5 ppmv absolute difference.	Before initial run and after a failed system bias test or drift test.
M	System Performance	System bias (or pre- and post-run 2-point system calibration error for dilution (Systems).	Within ± 5.0% of the analyzer calibration span for low-sacle and upscale calibration gases. Alternative specification: ≤ 0.5 ppmv absolute difference.	Before and after each run.
M	System Performance	System response time	Determines minimum sampling time per point	During initial sampling system bias test.
M	System Performance	Drift	≤ 3.0% of calibration span for low-level and mid- or high-level gases.	After each test run.

SUMMARY TABLE OF AQ/QC—Continued

Status	Process or element	QA/QC specification	Acceptance criteria	Checking frequency
			Alternative specification: ≤ 0.5 ppmv absolute difference.	
M	System Performance	NO_2-NO conversion efficiency.	≥ 90% of certified test gas concentration	Before or after each test.
M	System Performance	Purge time	≥ 2 times system response time	Before starting the first run and when probe is removed from and re-inserted into the stack.
M	System Performance	Minimum sample time at each point.	Two times the system response time	Each sample point.
M	System Performance	Stable sample flow rate (surrogate for maintaining system response time).	Within 10% of flow rate established during system response time check.	Each run.
M	Sample Point Selection	Stratification test	All points within: ± 5% of mean for 1-point sampling. ± 10% of mean for 3-point. Alternatively, all points within: ± 0.5 ppm of mean for 1-point sampling. ± 1.0 ppm of mean for 3-point sampling.	Prior to first run.
A	Multiple sample points simultaneously.	No. of openings in probe.	Multi-hole probe with verifiable constant flow through all holes within 10% of mean flow rate (requires Administrative approval for Part 75).	Each run.
M	Data Recording	Frequency	≤ 1 minute average	During run.
S	Data Parameters	Sample concentration range.	All 1-minute averages within calibration span	Each run.
M	Date Parameters	Average concentration for the run.	Run average ≤ calibration span	Each run.

S = Suggest.
M = Mandatory.
A = Alternative.
Agency.

* * * * *

12.11 *Calculated Spike Gas Concentration and Spike Recovery for the Example Alternative Dynamic Spiking Procedure in Section 16.1.3.*

Use Equation 7E–11 to determine the calculated spike gas concentration. Use Equation 7E–12 to calculate the spike recovery.

$$C_{Calc} = \frac{\left(C_{Spike}\right)\left(Q_{Spike}\right)}{Q_{Total}} \qquad \text{Eq. 7E-11}$$

$$R = \frac{DF\left(C_{ss} - C_{native}\right) + C_{native}}{C_{Spike}} \times 100 \qquad \text{Eq. } 7E\text{-}12$$

* * * * *

16.2.2 *Tedlar Bag Procedure.* Perform the analyzer calibration error test to document the calibration (both NO and NO_X modes, as applicable). Fill a Tedlar bag approximately half full with either ambient air, pure oxygen, or an oxygen standard gas with at least 19.5 percent by volume oxygen content. Fill the remainder of the bag with mid- to high-level NO in N_2 (or other appropriate concentration) calibration gas. (Note that the concentration of the NO standard should be sufficiently high enough for the diluted concentration to be easily and accurately measured on the scale used. The size of the bag should be large enough to accommodate the procedure and time required.)

(1) Immediately attach the bag to the inlet of the NO_X analyzer (or external converter if used). In the case of a dilution-system, introduce the gas at a point upstream of the dilution assembly. Measure the NO_X concentration for a period of 30 minutes. If the NO_X concentration drops more than 2 percent absolute from the peak value observed, then the NO_2 converter has failed to meet the criteria of this test. Take corrective action. The highest NO_X value observed is considered to be NO_{XPeak}. The final NO_X value observed is considered to be NO_{Xfinal}.

(2) [Reserved]

* * * * *

[FR Doc. E9–12565 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–413; MB Docket No. 08–68; RM–11421]

Radio Broadcasting Services; Beatty and Goldfield, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making issued at the request of Keilly Miller, proposing the allotments of Channel 259A at Beatty, Nevada, and Channel 262C1 at Goldfield, Nevada, as first local FM transmission services. A staff

engineering analysis indicates that Channel 259A can be allotted to Beatty consistent with the minimum distance separation requirements of the Rules with a site restriction 8.6 kilometers (5.3 miles) west located at reference coordinates 36–56–05 NL and 116–51–00 WL. Moreover, Channel 262C1 can be allotted to Goldfield consistent with the minimum distance separation requirements of the Commission's Rules (the ''Rules'') with a site restriction 0.6 kilometers (0.4 miles) northeast of the community located at reference coordinates 37–42–41 NL and 117–13–56 WL.

DATES: Effective June 29, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 08–68, adopted February 18, 2009, and released February 20, 2009. An Erratum, DA 09–XXX was released on May 19, 2009, changing the effective date of this final rule. The *Notice of Proposed Rule Making* proposed the allotment of Channel 259A at Beatty, Nevada, and Channel 262C1 at Goldfield, Nevada. *See* 73 FR 63131, published October 23, 2008. The full text of the *Report and Order* is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Beatty, Channel 259A, and Goldfield, Channel 262C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–12535 Filed 5–28–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–414; MB Docket No. 08–201; RN–11478]

Radio Broadcasting Services; Williston, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Henry B. Shaffer, allots Channel 260A at Williston, South Carolina, as the community's second local FM service. Channel 260A can be allotted to Williston, South Carolina, in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.2 kilometers (11.3 miles) east of Williston. The coordinates for Channel 260A at Williston, South Carolina, are 41–31–30 North Latitude and 120–19–45 West Longitude.

DATES: Effective June 29, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–201, adopted February 18, 2009, and released February 20, 2009. An Erratum, DA 09–1089 was released on May 19, 2009, changing the effective date of this final rule. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Williston, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–12537 Filed 5–28–09; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 547 and 552

[GSAR Amendment 2009–06; GSAR Case 2006–G518 (Change 34); Docket 2008–0007; Sequence 2]

RIN 3090–AI52

General Services Administration Acquisition Regulation; GSAR Case 2006–G518; Rewrite of GSAR Part 547, Transportation

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by deleting and reserving Part 547, Transportation.

DATES: *Effective Date:* June 29, 2009

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Jeritta Parnell, Procurement Analyst, at (202) 501–4082. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2009–06, GSAR case 2008–G518 (Change 34).

SUPPLEMENTARY INFORMATION:

A. Background

GSA published a proposed rule, with request for comments, in the **Federal Register** at 73 FR 32277 on June 6, 2008. No comments were received in response to the proposed rule. Therefore, the proposed rule is converted to final with no change. The information contained in Subpart 547.3—Transportation in Supply Contracts, sections 547.300, 547.303, 547.304, 547.305, and 547.370, is being deleted. In addition, clauses 552.247–70, Placarding Railcar Shipments, and 552.247–71, Diversion of Shipment Under f.o.b. Destination Contracts, are being deleted from 552.547.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes information and clauses that are deemed unnecessary and therefore, has no impact.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 547 and 552

Government procurement.

Dated: March 6, 2009.

Rodney P. Lantier,

Acting, Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, under the authority of 40 U.S.C. 121(c), GSA amends 48 CFR parts 547 and 552 as set forth below:

PART—547 [Removed and Reserved]

■ 1. Remove and reserve part 547.

■ 2. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.247–70 [Removed]

■ 3. Remove section 552.247–70.

552.247–71 [Removed]

■ 4. Remove section 552.247–71.

[FR Doc. E9–12362 Filed 5–28–09; 8:45 am]

BILLING CODE 6820–61–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819 and 1852

RIN 2700–AD41

NASA Mentor-Protégé Program

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to update the procedures for NASA's Mentor-Protégé program. The changes will streamline the program; align the mentoring to technical skills; expand the program to Veteran-owned, HUBZone, and NASA Small Business Innovation Research (SBIR) Phase II small businesses; and include award fee incentives.

DATES: *Effective date:* May 29, 2009.

Applicability date: NASA's revised procedures for the Mentor-Protégé program will be effective for new applications that are submitted on or after May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Sandra Morris, Office of Procurement, Contract Management Division, (202) 358–0532; e-mail: *Sandra.Morris@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On September 19, 2008, the National Aeronautics and Space Administration (NASA) published in the **Federal Register** (73 FR 54340–54345), a proposed rule, with request for comments, to amend its regulations governing the NASA Mentor-Protégé Program. This program is authorized under Title 42, U.S.C., 2473(c)(1). Specifically, the proposed rule defined the new program's eligibility requirements, and agreement submission and approval process. It also introduced mentor award fee incentives and explained the calculated subcontracting credit pursuant to FAR 52.219–9, Small Business Subcontracting Plan.

Discussion of Comments on the Proposed Rule

The comment period for the proposed rule closed on November 18, 2008. NASA received substantive comments from eight commenters. One of the commenters opposed NASA's approach to implementation of the proposed rule, and the remaining seven supported it.

The commenter who opposed NASA's approach as set forth in the proposed rule felt that there are already adequate numbers of specialized programs for various small businesses, and stated that they adversely impact the opportunities for regular small business entities. Of the seven commenters who generally supported the proposed rule, about half sought to be included in the mentoring program or requested referrals, and the other half requested that specific language be added to the rule.

Based on NASA's evaluation of the comments and the purpose of the rule, NASA modified the proposed rule in response to issues raised in the comments. As discussed below, this final rule provides definitions and clarifications of NASA's Mentor Protégé program. The following is an analysis of the substantive comments and NASA's corresponding responses.

Requirements To Qualify as a Protégé

Three of the commenters expressed the view that the proposed eligibility requirements in section 1819.7202(b) Eligibility of Protégés, should be expanded to include non-profit agencies for the blind or a qualified nonprofit agency for the severely disabled. The suggestion was made to add the following under paragraph (b)(1) ''or a qualified non-profit agency for the blind or a qualified nonprofit agency for other severely disabled as defined in 41 CFR 51–4 under the Ability One Program.''

Response: NASA has modified section 1819.7202 ''Eligibility'' by adding under paragraph (b)(1) ''Eligibility of Protégé, nonprofit agencies employing people who are blind or severely disabled''.

Award Fee

One commenter asked for additional clarification regarding award fees. According to this commenter, the new rule appears to eliminate the existing award fee provisions and introduces a new award fee incentive for companies which mentor SBIR II protégé firms. The commenter states that 1819.7215(b)(4) provides that ''[i]n contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7209.'' The commenter further notes that the new 1819.7209 addresses credit agreements and reimbursement of certain costs associated with providing developmental assistance, and asks whether award fees will be limited to arrangements with SBIR II companies, or if preexisting award fees will still be available. Could the agency mean that when a prime contract contains an award fee incentive, participation as a mentor will be favorably factored into the award fee determination?

Response: The correct citation for the referenced language is 1852.219–77 rather than 1819.7215(b)(4). The award fee evaluation criteria as stated in NFS 1816.405–274(g)(3) remains unchanged. NFS 1816.405–274(g)(3) states that the contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program may be evaluated.

In addition to the award fee evaluation criteria stated in NFS 1816.405–274(g)(3), the new Mentor-Protégé program in 1819.7208 has been added and applies when the protégé is a NASA SBIR Phase II contractor.

DOD Mentor-Protégé Reciprocity

Another commenter asks whether reciprocity to the DOD Mentor-Protégé program would be eliminated under the proposed rule.

Response: This rule removes the DOD reciprocity previously referenced in 1819.7204 ''Transportability of features from the Department of Defense (DOD) Mentor-Protégé Program to NASA contractors''.

Self-Certification

One commenter requested confirmation that protégé companies will no longer be allowed to self-certify.

Response: Protégé companies are still allowed to self-certify.

Protégé Selection Process

A commenter asked NASA to confirm the change that mentors would be required to select protégé companies that are SDBs, WOSB, HUBZone SBs, VO/SDVO SBs, HBCUs, MIs or SBIR II companies. The preexisting rule stated that it would ''encourage'' as opposed to ''require'' this selection.

Response: Eligible protégé companies must be one of the types of companies listed in section 1819.7202. In response to comments received, NASA has added nonprofit agencies employing people who are blind or severely disabled to the list of eligible protégés.

SBIR Phase II Protégé

One commenter states that because the rule requires that companies under the award fee pilot have already been selected for SBIR Phase II contracts with NASA, it does not explain how a prime contractor mentor subcontracts with a SBIR II protégé, which is a prime contractor in its own right.

Response: The SBIR Phase II contractor can hold the SBIR

Phase II contract and be eligible for developmental assistance in the form of noncompetitive award of subcontracts under NASA contracts in accordance with 1819.7205(c)(2).

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because participation in the mentor protégé program is voluntary and does not impose an economic impact beyond that addressed in the FAC 2005–14 publication of the FAR final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is applicable because the NFS changes impose information collection requirements in the form of applications and report submissions. The information collection has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq*. via control number 2007–0078.

List of Subjects in 48 CFR Parts 1819 and 1852

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1819 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1819 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS PROGRAMS

■ 2. Subpart 1819–72 is revised to read as follows:

Subpart 1819.72—NASA Mentor-Protégé Program

1819.7201 Scope of subpart.
1819.7202 Eligibility.
1819.7203 Mentor approval process.
1819.7204 Protégé selection.
1819.7205 Mentor-protégé agreements.
1819.7206 Agreement contents.
1819.7207 Agreement submission and approval process.
1819.7208 Award Fee Pilot Program.
1819.7209 Credit agreements.
1819.7210 Agreement terminations.
1819.7211 Loss of eligibility.
1819.7212 Reporting requirements.
1819.7213 Performance reviews.
1819.7214 Measurement of program success
1819.7215 Solicitation provision and contract clauses.

Subpart 1819.72—NASA Mentor-Protégé Program

1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) established under the authority of Title 42, U.S.C., 2473(c)(1). The purpose of the Program is to:

(1) Provide incentives to NASA contractors, performing under at least one active approved subcontracting plan negotiated with NASA to assist protégés in enhancing their capabilities to satisfy NASA and other contract and subcontract requirements;

(2) Increase the overall participation of protégés as subcontractors and suppliers under NASA contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégés and mentors.

(b) Under the Program, eligible entities approved as mentors will enter into mentor-protégé agreements with

eligible protégés to provide appropriate developmental assistance to enhance the capabilities of the protégés to perform as subcontractors and suppliers. NASA may provide the mentor award fee incentives. Additionally, this subpart explains the calculated subcontracting credit for a mentor-protégé program pursuant to FAR 52.219–9, Small Business Subcontracting Plan.

1819.7202 Eligibility.

(a) *Eligibility of Mentors:* To be eligible to participate as a mentor, an entity must be—

(1) A large prime contractor performing under contracts with at least one approved subcontracting plan negotiated with NASA, pursuant to FAR Subpart 19.7, The Small Business Subcontracting Program. A contractor may apply to become a mentor even if they currently are not performing under a NASA contract with an approved subcontracting plan, if they are currently performing for another Federal Agency under a contract with an approved subcontracting plan. A NASA mentor-protégé agreement will not be approved until such time the mentor company is performing under a NASA contract with an approved subcontracting plan; and

(2) A contractor eligible for receipt of Government contracts. (i) An entity may not be approved for participation in the Program as a mentor if, at the time of requesting participation in the program, it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR Subpart 9.4, Debarment, Suspension, and Ineligibility.

(b) *Eligibility of Protégés:* To be eligible to participate as a protégé, an entity must—

(1) Be classified as a Small Disadvantaged Business (SDB), a women-owned small business, a HUBZone small business, a veteran-owned or service-disabled veteran-owned small business, an historically black college and university, minority institution of higher education, as defined in FAR Part 2, Definitions of Parts and Terms, an active NASA SBIR Phase II company, or a non-profit agency employing people who are blind or severely disabled as defined in 41 CFR Chapter 51.

(2) Be eligible for the award of Federal contracts; and

(3) Be a small business according to the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé to the mentor if the protégé is representing itself as a women-owned small business, HUBZone small business, or a veteran-owned or service-disabled veteran-owned small business.

(4) Except for SDBs, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined according to FAR 19.304.

1819.7203 Mentor approval process.

(a) An entity seeking to participate as a mentor must apply to the NASA Headquarters Office of Small Business Programs (OSBP), to establish its initial eligibility and approval as a mentor, prior to submission of a mentor-protégé agreement.

(b) The application must provide the following information:

(1) A statement that the entity is currently performing under at least one active approved subcontracting plan negotiated with NASA pursuant to FAR 19.702, The Small Business Subcontracting Program, and that the entity is currently eligible for the award of Government contracts.

(2) A summary of the entity's historical and recent activities and accomplishments under its small and disadvantaged business utilization program.

(3) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of all other Federal agency contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of subcontracts that the entity awarded under NASA contracts during the two preceding fiscal years.

(6) The total dollar amount of subcontracts that the entity awarded under all other Federal agency contracts during the two preceding fiscal years.

(7) The total dollar amount and percentage of subcontracts that the entity awarded to all SDB, women-owned small businesses, HUBZone small businesses, veteran-owned and service-disabled veteran-owned small businesses, Historically Black Colleges, and Universities, minority institutions of higher education and nonprofit agencies employing people who are blind and severely disabled under NASA contracts and other Federal agency contracts during the two preceding fiscal years. If the entity is presently required to submit a Summary Subcontracting Report via the Government Electronic Subcontracting Reporting System (eSRS), the application must include copies of the final reports for the two preceding fiscal years.

(8) Information on the entity's ability to provide developmental assistance to its eligible protégés.

(9) Any additional information as requested by NASA OSBP.

(c) In accordance with the Small Business Act, developmental assistance as described in 1819.7205(c) and provided by a mentor to its protégé pursuant to a mentor-protégé agreement may not be a basis for determining affiliation or control (either direct or indirect) between the parties.

(d) Entities that apply for participation and are not approved will be provided the reasons and an opportunity to submit additional information for reconsideration.

(e) Entities approved for participation as a mentor in the NASA program must resubmit a mentor application every six (6) years for review and approval by NASA OSBP.

(f) A template of the mentor application is available at: *http://www.osbp.nasa.gov*.

1819.7204 Protégé selection.

(a) Mentors will be solely responsible for selecting protégés. Mentors are required to identify and select concerns that are defined as an SDB, women-owned small business, HUBZone small business, veteran-owned or service-disabled veteran-owned small business, Historically Black Colleges and Universities, minority institutions of higher education, an active NASA SBIR Phase II company or a nonprofit agency employing the blind or severely disabled.

(b) The selection of protégés by a mentor may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or eligibility of an entity selected to be a protégé, the mentor must refer the protest to the SBA to resolve in accordance with 13 CFR part 121 (with respect to size) or 13 CFR part 124 (with respect to disadvantaged status).

(d) A protégé may have only one active NASA mentor-protégé agreement, and may not participate in the NASA Program more than two times as a protégé.

(e) Protégés will be required to submit a protégé application concurrently with the agreement submission. This application will include the following information:

(1) A summary of the entity's historical and recent activities, including annual revenue and number of employees.

(2) The total dollar amount of NASA contracts and subcontracts that the entity received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(3) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the two preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(4) The total dollar amount of subcontracts that the company awarded under NASA contracts during the two preceding fiscal years.

(5) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the two preceding fiscal years.

1819.7205 Mentor-protégé agreements.

(a) The agreements shall be structured after the mentor completes an assessment of the developmental needs of the protégé and a mutual agreement is reached regarding the developmental assistance to be permitted to address those needs and enhance the protégé's ability to perform successfully under contracts and/or subcontracts.

(b) A mentor shall not require a protégé to enter into a mentor-protégé agreement as a condition for award of a contract by the mentor, including a subcontract under a NASA contract awarded to the mentor.

(c) The mentor-protégé agreement may provide for the mentor to furnish any or all of the following types of developmental assistance:

(1) Assistance by the mentor's personnel in—

(i) General business management, including organizational management, financial management, personnel management, marketing, business development, and overall business planning;

(ii) Engineering, environmental and technical matters; and

(iii) Any other assistance designed to develop the capabilities of the protégé under the developmental program.

(2) Award of subcontracts under NASA contracts or other contracts on a noncompetitive basis.

(3) Advance payments under such subcontracts. The mentor must administer advance payments when first approved by NASA in accordance with FAR Subpart 32.4, Advance Payments for Non-Commercial Items.

(4) Loans.

(5) Investment(s) in the protégé in exchange for an ownership interest in the protégé, not to exceed 10 percent of the total ownership interest. Investments may include, but are not limited to, cash, stock, and contributions in kind.

(6) Assistance that the mentor obtains for the protégé from one or more of the following:

(i) Small Business Development Centers established pursuant to Section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).

(iii) Historically Black Colleges and Universities.

(iv) Minority institutions of higher education.

(d) Developmental assistance provided under an approved mentor-protégé agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor's subcontracts. Costs associated with the latter must be accumulated and charged in accordance with the contractor's approved accounting practices; they are not considered developmental assistance costs eligible for credit under the Program.

(e) A template of the mentor-protégé agreement is available at *http://www.osbp.nasa.gov*.

1819.7206 Agreement contents.

Each mentor-protégé agreement will contain the following elements:

(a) The name, address, e-mail address, and telephone number of the mentor and protégé points of contact;

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé to the mentor and a statement that, at the time the agreement is submitted for approval, the protégé, if an SDB, a women-owned small business, a HUBZone small business, or a veteran-owned, a service-disabled veteran-owned small business concern or a NASA SBIR Phase II Company, does not exceed the size standard for the appropriate NAICS code;

(c) The DUNS number of the mentor and protégé;

(d) A statement that the mentor is eligible to participate in accordance with 1819.7202(a);

(e) A statement that the protégé is eligible to participate in accordance with 1819.7202(b);

(f) A developmental program specifying the type of assistance the mentor will provide to the protégé and how that assistance will—

(1) Increase the protégé's ability to participate in NASA, Federal, and/or commercial contracts and subcontracts; and

(2) Increase small business subcontracting opportunities in industry categories where eligible protégés or other small business firms are not dominant in the company's vendor base;

(g) Factors to assess the protégé's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(h) An estimate of the dollar value and type of subcontracts that the mentor will award to the protégé, and the period of time over which the subcontracts will be awarded;

(i) A statement from the mentor and protégé indicating a commitment to comply with the requirements for reporting in accordance with 1819.7212 and for review of the agreement during the duration of the agreement, and additionally for the protégé, two years thereafter;

(j) Procedures to terminate the agreement in accordance with 1819.7210;

(k) A provision that the term for the agreement will not exceed 3 years for a credit agreement;

(l) Additional terms and conditions as may be agreed upon by both parties; and

(m) Signatures and dates for both parties to the mentor-protégé agreement.

1819.7207 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors in accordance with 1819.7203, will submit to a Small Business Specialist at a NASA Center—

(1) A signed mentor-protégé agreement pursuant to 1819.7206;

(2) The estimated cost of the technical assistance to be provided, broken out per year and per task, in a separate cost volume; and

(3) NASA OSBP may require additional information as requested upon agreement submission.

(b) The mentor-protégé agreement must be approved by the Assistant Administrator, NASA OSBP, prior to the mentor incurring eligible costs for developmental assistance provided to the protégé.

(c) The cognizant NASA center will issue a contract modification, if justified prior to the mentor incurring costs for developmental assistance to the protégé.

1819.7208 Award Fee Pilot Program.

(a) Mentors will be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR Phase II Protégés only. The award fee will be assessed at the end of the Mentor-Protégé agreement period.

(b) The overall developmental assistance performance of NASA contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans.

(c) Evaluation criteria to determine the award fee would include:

(1) Active participation in the Program;

(2) The amount and quality of developmental assistance provided;

(3) Subcontracts awarded to small businesses and others;

(4) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

(5) Accomplishment of any other activity as related to the mentor-protégé relationship.

(d) The Award Fee Pilot Program is an addition to the credit agreement. Participants that are eligible for award fee will also receive credit as described in 1819.7209.

1819.7209 Credit agreements.

(a) The credit permits the mentor to include the cost it expends on a mentor-protégé agreement as part of any subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan. The following provisions apply to all credit mentor-protégé agreements:

(1) Developmental assistance costs incurred by a mentor for providing assistance to a protégé pursuant to an approved credit mentor-protégé agreement may be credited as if the costs were incurred in a subcontract awarded to that protégé. Credit is given for the sole purpose of determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan pursuant to the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(2) Other costs that have been reimbursed through inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of the mentor in attaining an applicable subcontracting goal established under any contract containing a subcontracting plan.

(3) The amount of credit a mentor may receive for developmental assistance costs must be reported on a one-to-one basis for all dollars spent.

1819.7210 Agreement terminations.

(a) Agreements may be terminated for cause or on a voluntary basis by the mentor or the protégé. The procedures for agreement termination are outlined in the mentor-protégé agreement template available at *http://www.osbp.nasa.gov.*

(b) NASA OSBP maintains the right to terminate an agreement if milestones provided under the original agreement submission, pursuant to 1819.7206(g), are not satisfactorily achieved, or for other reasons as determined necessary by the NASA OSBP.

1819.7211 Loss of eligibility.

(a) If the mentor is suspended or debarred while performing under an approved mentor-protégé agreement, the mentor—

(1) May not be reimbursed or take credit for any costs of providing developmental assistance to its protégé, incurred more than 30 days after the imposition of such suspension or debarment; and

(2) Must promptly give notice of its suspension or debarment to its protégé and NASA OSBP.

(b) If the protégé is suspended or debarred while performing under an approved mentor-protégé agreement or the SBA determines that a protégé is ineligible according to program eligibility requirements, then—

(1) The mentor shall not be able to receive credit for any of the costs of providing assistance to the protégé after the date of the determination regarding the protégé's loss of eligibility; and

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's suspension or debarment, if participating in the Award Fee Pilot Program.

(c) If the protégé is a Historically Black College or University, or other minority institution of higher education that loses either their accredited or minority status, then:

(1) The mentor shall not be able to receive credit for any the costs of providing assistance to the protégé after the date of the determination regarding the protégé's status.

(2) The mentor shall not be eligible to receive an award fee for the assistance provided to the protégé after the date of the determination regarding the protégé's loss of accreditation or minority status.

1819.7212 Reporting requirements.

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each six-month period of performance commencing with the start of the agreement.

(c) Each semiannual report must include the following data on performance under the mentor-protégé agreement:

(1) Expenditures by the mentor.

(2) The number and dollar value of subcontracts awarded to the protégé.

(3) Description of developmental assistance provided, including milestones achieved.

(4) Impact of the agreement in terms of capabilities enhanced, certifications received, and/or technology transferred.

(d) Semiannually, the protégé must provide an independently developed progress report using the semiannual report template, on the progress made during the prior six months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The Protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

(e) The protégé semiannual report required by paragraph (d) of this section may be provided with the mentor semiannual report required by paragraph (a) of this section, or submitted separately.

(f) Reports for all agreements must be submitted to the NASA OSBP Mentor-Protégé Program Manager, the mentor's cognizant administrative contracting officer, and their cognizant center small business specialist.

(g) Templates for the semiannual report and the Post-Agreement report and guidance for their submission are available at: *http://www.osbp.nasa.gov.*

1819.7213 Performance reviews.

(a) NASA OSBP will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protégé agreements. These reviews will include verification of—

(1) All costs incurred by the mentor under the agreement to determine if they were reasonable in the provision of developmental assistance to the protégé in accordance with the mentor-protégé agreement and applicable regulations and procedures; and

(2) The mentor's and protégé's reported progress made by the protégé in employment, revenues, and

participation in NASA contracts during the program participation term.

1819.7214 Measurement of program success.

(a) NASA will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the number and dollar value of contracts and subcontract awards to protégés (under NASA contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the program until two years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protégé (or former protégé) by its mentor (or former mentor); and

(3) An increase in the protégé's number of employees from the date of entry into the program until two years after the completion of the agreement.

1819.7215 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protégé Program, in:

(1) Any contract that includes the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(b) The contracting officer shall insert the clause at 1852.219–79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protégé Program.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Sections 1852.219–77 and 1852.219–79 are revised to read as follows:

1852.219–77 NASA Mentor-Protégé Program.

As prescribed in 1819.7215, insert the following clause:

NASA Mentor-Protégé Program (Month/Year)

(a) Prime contractors are encouraged to participate in the NASA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The Program consists of:

(1) Mentors, which are large businesses and prime contractors with at least one active and approved NASA subcontracting plan;

(2) Protégés, which are subcontractors to the prime contractor. Protégés must qualify as certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, meeting the qualifications defined in FAR Part 2, Definitions of Parts and Term, active NASA SBIR Phase II companies or nonprofit agencies employing people who are blind or severely disabled as defined in 41 CFR Chapter 51.

(3) Mentor-protégé agreements endorsed by the cognizant NASA centers and approved by the NASA Office of Small Business Programs (OSBP);

(4) In contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7208.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the program are encouraged to contact the NASA OSBP, Washington, DC 20546, (202) 358–2088, for further information.

(End of clause)

1852.219–79 Mentor Requirements and Evaluation.

As prescribed in 1819.7215, insert the following clause:

Mentor Requirements and Evaluation (Month/Year)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés.

Eligible protégés include certified small disadvantaged business concerns, women-owned small business concerns, veteran-owned or service-disabled veteran-owned small business concerns, HUBZone small business concerns, Historically Black Colleges and Universities, minority institutions of higher education, as defined in FAR Part 2, Definitions of Parts and Terms, active NASA SBIR Phase II companies and nonprofit agencies employing the blind or severely handicapped as defined in 41 CFR Chapter 51.

(b) NASA will evaluate the contractor's performance on the following factors. If this contract includes an award fee incentive, this assessment will be accomplished as part of the fee evaluation process.

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) To what extent the entities' participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

(c) Semiannual reports shall be submitted by the mentor and the protégé to the cognizant NASA center and NASA Headquarters Office of Small Business Programs (OSBP), following the semiannual report template found on the Web site at *http://www.osbp.nasa.gov.*

(d) The mentor will notify the cognizant NASA center and NASA OSBP in writing, at least 30 days in advance of the mentor's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments, as it pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements for good cause, thereby excluding mentors or protégés from participating in the NASA Mentor-Protégé program. These actions shall be approved by the NASA OSBP. NASA shall terminate an agreement by delivering to the contractor a letter specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement.

(End of clause)

[FR Doc. E9–12487 Filed 5–28–09; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 948, 953, and 980

[Doc. No. AMS–FV–08–0018; FV08–980–1 PR]

Vegetable Import Regulations; Modification of Potato Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed modifications to the import regulations for Irish potatoes. This rule is implemented in accordance with section 608(e) (hereinafter referred to as ''section 8e'') of the Agricultural Marketing Agreement Act of 1937, which requires imported potatoes to meet the same or comparable grade, size, quality, and maturity requirements as those established under Federal marketing order regulations. This rule would: Reduce the number of marketing order areas determined as being in the most direct competition with imported potatoes from five to three; exempt U.S. No. 1 grade potatoes imported in certain small containers from size requirements; and remove certain language from Marketing Orders No. 948 and 953 that reference the regulation of imported Irish potatoes. In addition, this rule would make minor administrative changes to the potato, onion, and tomato import regulations to update informational references. The proposed modifications to the import regulations are expected to benefit potato importers and consumers.

DATES: Comments must be received by July 28, 2009.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202)720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' which provides that whenever certain specified commodities, including potatoes produced in certain areas, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. The import regulations for vegetables issued under section 8e, which cover imports of Irish potatoes, onions, and tomatoes, are contained in 7 CFR part 980.

This proposed rule is also issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, and Marketing Agreement No. 104 and Marketing Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Both orders are effective under the Act.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Section 8e provides authority to regulate certain imported commodities whenever those same commodities are regulated by a domestic marketing order. Potatoes are one of the commodities specifically covered by section 8e in the Act. In addition, section 8e provides that whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas are concurrently in effect, imports must comply with the provisions of the order which regulates the commodity produced in the area with which the imported commodity is in the ''most direct competition.'' Currently, five marketing orders are determined to be in most direct competition with Irish potato imports, varying by the type of potato and the shipping season. Section 980.1(a) reflects this determination.

This proposed rule invites comments on the modification of the Irish potato import regulations that would reduce the number of domestic marketing order areas determined as being in the most direct competition with imported Irish potatoes from five to three. This rule would also exempt U.S. No. 1 grade potatoes that are imported in three pound or less containers from any concurrent marketing order size requirements. Additionally, this rule would remove language contained in Marketing Orders No. 948 and 953 that would become obsolete upon the implementation of this proposed rule.

Finally, this rule would make minor changes to update certain informational references contained in the Irish potato, onion, and tomato import regulations.

Currently, five marketing orders are determined to be in most direct competition with imported Irish potatoes and act as the basis for the establishment of minimum grade, size, quality, and maturity requirements for imported Irish potatoes, as set forth in the import regulations issued under section 8e. The marketing order areas determined to be in most direct competition are as follows: Marketing Order No. 946 (Irish Potatoes Grown in Washington) for imports of red-skinned, round type potatoes during the period July through September; Marketing Order No. 948 (Area II) for imports of red-skinned, round type potatoes during the period October through the following June; Marketing Order No. 953 for imports of round white potatoes during the period June 5 through July 31; Marketing Order No. 948 (Area III) for imports of all other round type potatoes during the period August 1 through June 4 of the following year; and Marketing Order No. 945 for imports of long type potatoes during each month of the marketing year.

These determinations as to most direct competition need to be updated to reflect current production trends. With this rule, USDA is proposing to reduce the number of marketing orders determined to be in most direct competition with Irish potato imports from five to three: One for red-skinned, round type potatoes; one for all other varieties of round potatoes; and one for long type potatoes. Consequently, the import regulations for Irish potatoes (7 CFR 980.1) would be revised by determining Marketing Order No. 946 as the production area in most direct competition with imports of red-skinned, round type potatoes through the entire year and Marketing Order No. 948 (Area II) as the production area in most direct competition with imports of all other round type potatoes through the entire year. Marketing Order No. 945 would continue to be the area determined to be in most direct competition with imports of long type potatoes through the entire year.

Production trends in recent years justify the proposed changes to the designation of the area in most direct competition with imported potatoes. The production area for Irish potatoes grown in Washington, Marketing Order No. 946, has emerged as the clear domestic shipping leader for fresh packed red-skinned, round type potatoes, shipping more than three times the quantity as any other domestic area. Based on marketing order records for the years 2003–2007, the production area for Marketing Order No. 946 shipped an average of 1,370,410 hundredweight of red-skinned, round type, fresh packed potatoes. The next highest marketing order production area was the San Luis Valley of Colorado, covered by Marketing Order No. 948 (Area II). Based on marketing order statistics for the same period, the area shipped an average of 405,083 hundredweight of red-skinned, round type, fresh packed potatoes. Furthermore, handlers in the Marketing Order No. 946 production area shipped in all 12 months of the year.

Marketing Order 948 (Area II) ships a larger volume of red-skinned, round type, fresh packed potatoes a few months a year during its peak shipping season. However, Marketing Order 946 should be established as the order in most direct competition year round. This is due to its dominance in shipping volumes and year round availability. Establishing one marketing order as the order in most direct competition for red-skinned, round type potatoes would more accurately reflect current production trends and would simplify the process for importers by having the same regulations established on a year round basis. Consequently, USDA has determined that Marketing Order No. 946 should be designated as the area determined to be in most direct competition with imports of red-skinned, round type potatoes for the entire year.

Likewise, the production area for Irish potatoes grown in the San Luis Valley of Colorado, Marketing Order No. 948 (Area II), has become the predominant domestic shipping area of all other round type, fresh packed potatoes, shipping more than double the quantity as any other area. Based on marketing order statistics for the years 2003–2007, the production area for Marketing Order No. 948 (Area II) shipped an annual average of 1,671,810 hundredweight of all other round type, fresh packed potatoes. In addition, handlers in Area II shipped all other round type potatoes in all 12 months of the year. Following Colorado Area II in the quantity handled of all other round type, fresh potatoes was the Marketing Order No. 946 production area, where an annual average of 778,400 hundredweight was shipped during this four year period.

Prior to this proposal, USDA had determined that the production areas for Marketing Orders No. 948 (Area III) and No. 953 were in most direct competition with imports of all other round type potatoes during certain periods of the year and were designated as such in the import regulations. However, these production areas no longer ship fresh Irish potatoes in quantities that warrant the continuation of such a designation. Marketing order committee statistics show that handlers in the production area for Marketing Order No. 948 (Area III) shipped an annual average of 203,115 hundredweight of all other round type, fresh potatoes for the years 2003–2007, or approximately 12 percent of the amount shipped by the leading shipping area. Similarly, based on marketing order committee statistics, handlers in the production area for Marketing Order No. 953 shipped an annual average of 303,558 hundredweight of all other round type, fresh potatoes during the years 2005–2007, which is approximately 18 percent of the amount shipped by the leading shipping area.

Marketing Order 946 ships a larger volume of other round type, fresh packed potatoes a few months a year during its peak shipping season. However, Marketing Order 948 (Area II) should be established as the order in most direct competition year round. This is due to its dominance in shipping volumes and year round availability. Establishing one marketing order as the order in most direct competition for other round type potatoes would more accurately reflect current production trends and would simplify the process for importers by having the same regulations established on a year round basis. Consequently, USDA has determined that, based on recent shipment statistics, Marketing Order No. 948 (Area II) should be designated as the area determined to be in most direct competition with imports of all other round type potatoes for the entire year.

The production area for Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, covered by Marketing Order No. 945, has been, and is expected to continue to be, the production and shipping leader for long type potatoes. As such, the determination of the area in most direct competition with long type Irish potato imports as currently contained in the import regulations would continue unchanged.

This rule would also exempt U.S. No. 1 grade potatoes of any type imported in 3 pound or less containers from the size requirements otherwise specified in the potato import regulations. Marketing Order No. 946, which covers potato production in the state of Washington, contains this exemption in the handling regulation. Washington is the only domestic potato production area to ship U.S. No. 1 grade potatoes in 3 pound or less containers without regard to size.

However, they are marketed throughout the year. Therefore, the exemption from size requirements for imported potatoes in 3 pound or less containers should be based upon the regulation established under Marketing Order 946 for the entire year. This change would allow importers to import potatoes under comparable regulation.

Additionally, as a result of the proposed changes delineated above, this proposed rule would remove §§ 948.387(h) and 953.322(g) from the respective marketing orders. The respective sections of each marketing order, specifically addressing ''Applicability to imports'', would no longer be relevant with a change in the determination of areas in most direct competition with imported potatoes.

Marketing Orders No. 948 (Area III) and No. 953 would continue to be viable marketing orders in providing for the orderly marketing of Irish potatoes in the respective production areas. This proposed action would have no direct bearing on the operation of those programs. The proposed change of determination would simply mean that those marketing orders would no longer be used as a basis for establishing Irish potato import requirements and, as such, any language in the marketing orders that link the orders to the potato import regulations would be rendered obsolete.

Lastly, this rule would make minor changes to certain reference information included in the import regulations covering potatoes, onions, and tomatoes that either require updating or have become obsolete since the subpart was last amended. Specifically, the designation of governmental inspection services would be amended to reflect agency name changes, references to certain Code of Federal Regulations citation numbers would be updated to acknowledge changes, and outdated address information would be brought current.

USDA believes that the proposed modifications specified above would streamline the import regulations that potato importers are subject to. It is expected that these changes would benefit importers of Irish potatoes and consumers.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Small agricultural producers are defined as those whose annual receipts are less than $750,000, and small agricultural service firms, including potato importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000. There are approximately 255 importers of all types of potatoes who are subject to regulation under the Act. The majority of potato importers may be classified as small entities.

This proposal would modify the import regulations for Irish potatoes (7 CFR 980.1) by reducing the number of areas designated as being in most direct competition with Irish potato imports from five to three due to changes in production trends. This proposed rule would designate Marketing Order No. 946 as the sole production area in most direct competition with imports of red-skinned, round type potatoes, whereas the previous determination was that both Marketing Orders No. 946 and No. 948 (Area II) were the areas in most direct competition during certain specific periods of the year. This rule would also designate Marketing Order No. 948 (Area II) as the production area in most direct competition with imports of all other round type potatoes, whereas the previous determination was that Marketing Orders No. 948 (Area III) and No. 953 were the areas in most direct competition during certain specific periods of the year.

Section 8e of the Act provides authority for the regulation of imported Irish potatoes, whenever similar type potatoes are regulated by a domestic marketing order. In addition, section 8e provides that whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas are concurrently in effect, imports must comply with the provisions of the marketing order which regulates the commodity produced in the area with which the imported commodity is in the ''most direct competition.''

Currently, the Irish potato import regulations require importers to comply with the grade, size, quality, and maturity requirements of five marketing orders (Marketing Orders No. 945, No. 946, No. 948 (Area II and Area III), and No. 953) depending on the type of potato and the time period when shipped. This proposal would reduce that number to three by eliminating Marketing Orders No. 948 (Area III) and No. 953 from the determinations in § 980.1(a). Marketing Order No. 946 would be determined as the area in most direct competition with imports of red-skinned, round type potatoes, and Marketing Order No. 948 (Area II) would be determined as the area in most direct competition with imports of all other round type potatoes. Marketing Order No. 945 would continue as the area in most direct competition with imports of all long type potatoes.

Designating just three marketing orders as being generally in most direct competition with imported potatoes of similar type would more accurately reflect current domestic production trends. Statistics from recent years show that the production area of Marketing Order No. 946 (Irish potatoes grown in Washington) has emerged as the clear leader in the production of red-skinned, round type potatoes, nearly tripling the next largest production area (Marketing Order No. 948 (Area II)). Likewise, the production area of Marketing Order No. 948 (Area II) (Irish potatoes grown in the San Luis Valley of Colorado) has become the production leader of all other round type potatoes, producing over twice the quantity of these type potatoes than the next largest domestic producing region (Marketing Order No. 946). The production area for Marketing Order No. 945 (Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon) continues to be the production leader of long type potatoes.

This rule would also exempt U.S. No. 1 grade potatoes of any type imported in 3 pound or less containers from the size requirements otherwise specified in the potato import regulations. Marketing Order No. 946, which covers the only domestic potato production area that ships such potatoes, currently contains this exemption. However, they are marketed throughout the year. Therefore, the exemption from size requirements for imported potatoes in 3 pound or less containers should be based upon the regulation established under Marketing Order 946 for the entire year. This change would allow importers to import potatoes under comparable regulation.

Additionally, as a result of the proposed changes to the import regulations as delineated above, this rule would remove §§ 948.387(h) and 953.322(g) from the respective marketing orders. These sections of each marketing order, specifically addressing ''Applicability to imports'', would no

longer be necessary should the determination of areas in most direct competition with imported potatoes be modified as proposed.

Lastly, this rule would make minor changes to certain informational references included in the import regulations covering potatoes, onions, and tomatoes that require updating since the subpart was last amended. Specifically, the designation of the governmental inspection service would be amended to reflect agency name changes, references to certain Code of Federal Regulations citation numbers would be updated to acknowledge changes, and outdated address information would be brought current.

In most cases, the proposed changes to the potato import regulations would constitute a relaxation of the regulatory requirements that potato imports are subject to. In all other cases, the proposed action would be a continuation of the current regulatory requirements. Therefore, the proposed changes are expected to either maintain or reduce the regulatory burden on potato importers.

Imports of red-skinned, round type potatoes, currently subject to the requirements of Marketing Orders No. 946 and 948 (Area II), would only be subject to the requirements of Marketing Order No. 946. The minimum size requirements in Marketing Order No. 946 are less restrictive than the size requirements in Marketing Order No. 948 (Area II).

Likewise, imports of all other round type potatoes, currently subject to the requirements of Marketing Orders No. 948 (Area III) and 953, would only be subject to the requirements of Marketing Order No. 948 (Area II). The minimum size requirements in Marketing Order No. 948 (Area II) are less restrictive than the requirements of both Marketing Orders No. 948 (Area III) and 953.

Exempting U.S. No. 1 grade potatoes handled in 3 pound or less containers from size requirements is also considered a relaxation of the current regulations.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large potato importers. As with all Federal marketing order programs and corresponding import regulations, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 948, 953, and 980 are proposed to be amended as follows:

1. The authority citation for 7 CFR part 948, 953, and 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

§ 948.387 [Amended]

2. In § 948.387, paragraph (h) is removed.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

§ 953.322 [Amended]

3. In § 953.322, paragraph (g) is removed.

PART 980—VEGETABLES; IMPORT REGULATIONS

4. In § 980.1, paragraphs (a)(2)(i), (a)(2)(ii), (b)(1), (b)(2), and (j) are revised to read as follows:

§ 980.1 Import regulations; Irish potatoes.

(a) * * *

(2) * * *

(i) Imports of red-skinned, round type potatoes during each month of the marketing year are in most direct competition with potatoes of the same type produced in the area covered by Marketing Order No. 946 (part 946 of this chapter).

(ii) Imports of all other round type potatoes during each month of the marketing year are in most direct competition with potatoes of the same type produced in Area 2, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter).

* * * * *

(b) * * *

(1) Through the entire year, the grade, size, quality, and maturity requirements of Marketing Order No. 946, as amended (part 946 of this chapter), applicable to potatoes of the red-skinned, round type shall be the respective grade, size, quality, and maturity requirements for all imported red-skinned, round type potatoes.

(2) Through the entire year, the grade, size, quality, and maturity requirements of Area II, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter), applicable to potatoes of the round type, other than red-skinned varieties, shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

* * * * *

(j) *Exemptions.* (1) The grade, size, quality and maturity requirements of this section shall not be applicable to potatoes imported for canning, freezing, other processing, livestock feed, charity, or relief, but such potatoes shall be subject to the safeguard provisions contained in § 980.501. Processing includes canning, freezing, dehydration, chips, shoestrings, starch and flour. Processing does not include potatoes that are only peeled, or cooled, sliced, diced, or treated to prevent oxidation, or made into fresh potato salad.

(2) There shall be no size requirements for potatoes that are

imported in containers with a net weight of 3 pounds or less, if the potatoes are otherwise U.S. No. 1 grade or better.

5. Section 980.117 is amended as follows:

a. Paragraph (e) is revised;

b. In paragraph (f)(2), remove the reference ''(7 CFR 2851)'' and add in its place the reference ''(7 CFR part 51).''

c. In paragraph (h), remove the references ''(7 CFR 2851.3195 through 2851.3209),'' ''(7 CFR 2851.3955 through 2851.3970),'' and ''(7 CFR 2851.3195 through 2851.3209)'' and add in their places the references ''(7 CFR 51.3195 through 51.3209),'' ''(7 CFR 51.3955 through 51.3970),'' and ''(7 CFR 51.3195 through 51.3209),'' respectively.

§ 980.117 Import regulations; onions.

* * * * *

(e) *Designation of governmental inspection service.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of onions that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

* * * * *

8. In § 980.212:

a. Paragraph (e) is revised;

b. In paragraph (f)(2), remove the reference ''(7 CFR 2851)'' and add in its place the reference ''(7 CFR part 51).''

c. In paragraph (h), remove the words ''(7 CFR 2851.1855 through 2851.1877; title 7, chapter I, part 51 was redesignated title 7, chapter 28, part 2851 on June 27, 1977)'' and add in their place the words ''(7 CFR 51.1855 through 51.1877).''

§ 980.212 Import regulations; tomatoes.

* * * * *

(e) *Designation of governmental inspection service.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of tomatoes that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

* * * * *

§ 980.501 [Amended]

9. Amend § 980.501 in paragraph (a)(4) by removing the words ''Fruit and Vegetable Division'' in the first and second sentences and adding in their places the words ''Fruit and Vegetable Programs.''; and in paragraph (d), remove the address ''Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–4607'' and add in its place the address ''Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237, telephone (202) 720–2491.''

Dated: May 20, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–12186 Filed 5–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0495; Directorate Identifier 2009–NM–049–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Learjet Model 60 airplanes. This proposed AD would require revising the Tire-Servicing section of the airplane maintenance manual and revising the Tires Limitation section of the airplane flight manual to incorporate revised procedures for servicing tires and checking for proper tire inflation. This proposed AD results from a report of the main landing gear tires blowing out during a takeoff roll. We are proposing this AD to prevent tire failure, which could result in failures of the braking and thrust reverser systems. In a critical phase of operation such as takeoff, loss of airplane control may result.

DATES: We must receive comments on this proposed AD by July 13, 2009.

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

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

For service information identified in this proposed AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Don Ristow, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4120; fax (316) 946–4107.

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–2009–0495; Directorate Identifier 2009–NM–049–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this

proposed AD because of those comments.

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

Discussion

We received a report of all four of the main landing gear tires blowing out during a takeoff roll of a Learjet Model 60 airplane. The airplane overran the end of the runway, ultimately stopping when it struck an embankment, and was destroyed by fire. Investigation of the tire fragments indicates that, in all four tires, there was evidence of internal heat damage consistent with under-inflation, over-loading, or a combination of both; damage to a tire under these conditions is cumulative. Tires that have been rolled or taxied at lower-than-specified tire pressure settings may fail. We are proposing this AD to prevent tire failure, which could result in failures of the braking and thrust reverser systems. In a critical phase of operation such as takeoff, loss of airplane control may result.

Relevant Service Information

We have reviewed Learjet 60 Temporary Revision (TR) 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual; and Learjet 60 Temporary Flight Manual Change (TFMC) 2009–03, dated March 9, 2009, to the Learjet 60 Airplane Flight Manual (AFM) and Learjet 60XR AFM. Learjet 60 TR 12–16 describes the procedures to use when checking for and maintaining proper tire inflation. Learjet 60 TFMC 2009–03 describes procedures to use when checking for proper tire inflation within 96 hours (4 days) prior to takeoff.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 240 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $19,200, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

Learjet: Docket No. FAA–2009–0495; Directorate Identifier 2009–NM–049–AD.

Comments Due Date

(a) We must receive comments by July 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 60 airplanes, certificated in any category, serial numbers 60–002 through 60–369 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Unsafe Condition

(e) This AD results from a report of the main landing gear tires blowing out during a takeoff roll. The Federal Aviation Administration is issuing this AD to prevent tire failure, which could result in failures of the braking and thrust reverser systems. In a critical phase of operation such as takeoff, loss of airplane control may result.

Compliance

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

Revise the Maintenance Manual (MM)

(g) Within 14 days after the effective date of this AD, revise the Tire-Servicing section of Learjet 60 MM to include the information in Learjet 60 Temporary Revision (TR) 12–16, dated March 18, 2009.

Note 1: The actions required by paragraph (g) of this AD may be done by inserting a copy of Learjet 60 TR 12–16, dated March 18, 2009, into the Learjet 60 MM. When Learjet 60 TR 12–16 has been included in general revisions of the Learjet 60 MM, the general revisions may be inserted in the MM, provided the relevant information in the general revision is identical to that in the TR.

Revise the Airplane Flight Manual (AFM)

(h) Within 14 days after the effective date of this AD, revise the Tires Limitations section of the Learjet 60 AFM or Learjet 60XR AFM, as applicable, to include the information in the Learjet 60 Temporary Flight Manual Change (TFMC) 2009–03, dated March 9, 2009. Thereafter, operate the airplane according to the limitations and procedures in the TFMC.

Note 2: The actions required by paragraph (h) of this AD may be done by inserting a copy of Learjet 60 TFMC 2009–03, dated March 9, 2009, into the Learjet 60 or 60XR

AFM, as applicable. When Learjet 60 TFMC 2009–03 has been included in general revisions of the applicable AFM, the general revisions may be inserted in the applicable AFM, provided the relevant information in the general revision is identical to that in Learjet 60 TFMC 2009–03.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Don Ristow, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4120; fax (316) 946–4107.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on May 18, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12522 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0489; Directorate Identifier 2009–CE–025–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–802 and AT–802A Airplanes

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 certain Air Tractor, Inc. (Air Tractor) Models AT–802 and AT–802A airplanes. This proposed AD would require installing a rudder-aileron interconnect cable system shield kit and securing any items stowed in the baggage compartment using tie downs and/or a cargo net until the cable shield kit is installed. This proposed AD results from a report of the rudder pedal cable becoming jammed in flight. We are proposing this AD to prevent jamming of the rudder-aileron interconnect cables by unsecured items in the baggage compartment, which could result in failure of the rudder-aileron interconnect cable system. This failure could lead to loss of control.

DATES: We must receive comments on this proposed AD by July 28, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612; E-mail: *parts@airtractor.com;* Internet: *http://www.airtractor.com.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–0489; Directorate Identifier 2009–CE–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

We received a report of an Air Tractor Model AT–802 airplane rudder pedal jamming in flight. The pilot was able to maintain control and land. After landing, a cable pulley in the rudder system was found broken. Air Tractor believes one or more unsecured items in the baggage compartment became entangled in the cables and caused them to jam, resulting in failure of the pulley.

Air Tractor has designed a modification kit that installs shielding in the baggage compartment to prevent unsecured stowed items from becoming entangled in the rudder-aileron interconnect cable system.

This condition, if not corrected, could result in jamming of the rudder-aileron interconnect cables by unsecured items in the baggage compartment, which could result in failure of the rudder-aileron interconnect cable system. This failure could lead to loss of control.

Relevant Service Information

We have reviewed Snow Engineering Co., Service Letter #274, Revision A, dated April 6, 2009.

The service information describes procedures for installing a cable shield in the baggage compartment.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require installing a rudder-aileron interconnect cable system shield kit and securing any items stowed in the baggage compartment using tie downs and/or a cargo net until the cable shield kit is installed.

Normally, the FAA would use a compliance time of hours time-in-service (TIS) or a certain number of months. The proposed AD uses a calendar date for compliance instead of hours TIS or a certain number of months. We are using the calendar date of before December 31, 2009, to allow owners with airplanes used in agricultural spray operations until the end of the spray season to install the rudder-aileron interconnect cable system shields (terminating action).

Differences Between This Proposed AD and the Service Information

This proposed AD would require securing stowed items in the baggage compartment with tie-down straps or a cargo net until the rudder-aileron interconnect cable system shield required in the proposed AD is

installed. The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 210 airplanes in the U.S. registry.

We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Cable Shield Kit SL#274: 4.5 work-hours × $80 per hour = $360	$860	affects 170 airplanes at $1,220 each	$207,400
Cable Shield Kit SL#274–2: 4.5 work-hours × $80 per hour = $360	540	affects 40 airplanes at $900 each	36,000

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 regulation:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Air Tractor, Inc.: Docket No. FAA–2009–0489; Directorate Identifier 2009–CE–025–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by July 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AT–802 and AT–802A airplanes, serial numbers 802/802A–001 through 802/802A–0319, that are certificated in any category.

Unsafe Condition

(d) This AD results from a report of the rudder pedal cable becoming jammed in flight. We are proposing this AD to prevent jamming of the rudder-aileron interconnect cables by unsecured items in the baggage compartment, which could result in failure of the rudder-aileron interconnect cable system. This failure could lead to loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Secure any items stowed in the baggage compartment using tie down straps and/or a cargo net.	Before further flight after the effective date of this AD until the installation of the rudder-aileron interconnect cable shield kit required in paragraph (e)(2) of this AD is done.	Not applicable.
(2) Install the following rudder-aileron interconnect cable shield kit, as applicable. (i) For all airplanes equipped for agricultural spray operations and all fire-fighting airplanes retrofitted with Gen II Fire Retardant Delivery System relay box, install cable shield kit SL#274. (ii) For all fire-fighting airplanes not equipped with Gen II Fire Retardant Delivery System relay box, install cable shield kit SL#274–2.	No later than December 31, 2009	Snow Engineering Co., Service Letter #274, Revision A, dated April 6, 2009.

Actions	Compliance	Procedures
(iii) Installation of the applicable cable shield kit SL#274 or SL#274–2 terminates the requirement of paragraph (e)(1) of this AD.		

Alternative Methods of Compliance (AMOCs)

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

Related Information

(g) To get copies of the service information referenced in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612; E-mail: *parts@airtractor.com;* Internet: *http://www.airtractor.com.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on May 20, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12524 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–KY–0003–200616; FRL–8911–3]

Approval and Promulgation of Implementation Plans; Kentucky; NO_X SIP Call Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Kentucky on September 12, 2005, and March 24, 2006. The first revision provides Kentucky's response to EPA's regulations entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''Nitrogen Oxides (NO_X) SIP Call Phase I.'' The second revision responds to EPA's regulations entitled, ''Interstate Ozone Transport: Response to Court Decisions on the NO_X SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' otherwise known as the '' NO_X SIP Call Phase II.'' The NO_X SIP Call Phase II revision satisfies EPA's rule that requires Kentucky to submit Phase II revisions necessary to achieve applicable, incremental reductions of NO_X. The intended effect of the Phase II SIP revision is to reduce emissions of NO_X originating in the Commonwealth of Kentucky to help attain and maintain the national ambient air quality standard for ozone. The March 24, 2006, final submittal stopped the federal implementation plan clock that started on February 8, 2006, when EPA made a finding that Kentucky failed to submit the required SIP for Phase II of the NO_X SIP Call by April 1, 2005.

DATES: Comments must be received on or before June 29, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–KY–0003, by one of the following methods:

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

2. *E-mail: benjamin.lynorae@epa.gov.*

3. *Fax:* 404–562–9019.

4. *Mail:* EPA–R04–OAR–2005–KY–0003, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2005–KY–0003. 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *http://www.regulations.gov* index. 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 in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA

requests that if at all possible, you 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Analysis of State's Submittal
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

On October 27, 1998, EPA published a final rule known as the ''NO_X SIP Call'' (63 FR 57356), and later known as the ''NO_X SIP Call Phase I.'' The NO_X SIP Call Phase I required 22 states, including the Commonwealth of Kentucky, to meet NO_X emission budgets during the ozone season (March through September) to reduce the amount of ground level ozone that is transported across the eastern United States. EPA identified NO_X emission reductions by source category when they could be achieved by using cost-effective measures. These source categories include electric generating units (EGUs), non-EGUs, internal combustion engines (ICEs) and cement kilns. For each affected jurisdiction, EPA determined NO_X emission budgets based on the implementation of cost effective controls. The budgets were to be met by the year 2007. Phase I of the NO_X SIP Call gave states the flexibility to decide which source categories to regulate to meet its statewide budget. During Phase I, Kentucky regulated EGUs, non-EGUs and cement kilns, but chose not to address ICEs. See, 67 FR 17624, 17625 (April 11, 2002) (Approval and Promulgation of Implementation Plans: Kentucky: Nitrogen Oxides Budget and Allowance Trading Program).

A number of parties, including certain states as well as industry and labor groups, challenged Phase I of the NO_X SIP Call rule. On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (64 FR 26298 and 65 FR 11222, respectively). On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit Court (D.C. Circuit Court) issued its decision on the NO_X SIP Call, ruling in favor of EPA on all the major issues. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). However, the D.C. Circuit Court remanded four specific elements to EPA for further action: The definition of EGU; the level of control for stationary internal combustion engines; the geographic extent of the NO_X SIP Call for Georgia and Missouri; and the inclusion of Wisconsin. On January 31, 2002, the Kentucky Environmental and Public Protection Cabinet (KEPPC) submitted final revisions to its SIP that complied with the requirements of Phase I of the NO_X SIP Call. EPA approved the revisions on April 11, 2002, 67 FR 17624, which became effective on June 10, 2002.

On April 21, 2004, EPA published a final rule, addressing the remanded portion of the NO_X SIP Call Rule. This rule is entitled, ''Interstate Ozone Transport: Response to Court Decisions on the NO_X SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' and is otherwise known as the ''NO_X SIP Rule Phase II'' (69 FR 21604). The action promulgated specific changes in response to the Court's ruling on Phase I of the Rule. Specifically, it finalized certain aspects of the definitions of EGU and non-EGU, and the control level assumed for large stationary ICEs. For large, natural gas fired, stationary ICEs the control level was set at 82 percent, because the vast majority of large natural gas-fired ICEs are lean burn. For diesel and dual fuel stationary ICEs the control level was set at 90 percent since on average they are rich burn, diesel and dual fuel ICEs. The April 21, 2004, rule also finalized partial state budgets for Georgia, Missouri, Alabama, and Michigan, changes to statewide NO_X budgets, the SIP submittal dates for the required states to address the Phase II portion of the budget, the SIP submittal dates for Georgia and Missouri, the compliance date for all covered sources, and the exclusion of Wisconsin from the NO_X SIP Call (69 FR 21604, April 21, 2004). The final rule also required states that submitted NO_X SIP Call Phase I revisions, to submit by April 1, 2005, Phase II SIP revisions as needed to achieve the necessary incremental reductions of NO_X. Phase II requires emissions reductions that are relatively small, representing less than 10 percent of the total reductions required by Phase I of the NO_X SIP Call.

Phase II of the NO_X SIP Call required Kentucky to reduce the Phase I NO_X emissions originating in the Commonwealth from 165,075 tons (Phase I budget) to 162,519 tons (Phase II budget) of NO_X emissions. (69 FR 21604, 2162, April 21, 2004). This represents a 4,224 ton reduction of NO_X emissions in Kentucky. The budget numbers for Phase II for each affected state were based on the Phase I emission inventory as revised in the ''Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone,'' which was published on March 2, 2000. However, EPA approved a revised Phase I Budget for Kentucky in a revision to the NO_X SIP Call submitted on April 11, 2002 (67 FR 17624). Therefore, the final Kentucky Phase II Budget in the April 21, 2004, notice is inaccurate because it is based on the previous Phase I Budget.

On January 23, 2004, EPA wrote a letter to KEPPC clarifying that based on current rules and regulations, including 63 FR 57356, 57416 (October 27, 1998), and 40 CFR 96.2, EPA was allowing each state with one or more carbon monoxide (CO) boiler combusting CO from fluidized catalytic cracking units (FCCUs) to determine whether all of the Commonwealth's FCCU–CO boilers were covered by the NO_X SIP Call trading program. There is currently only one facility in Kentucky with FCCU–CO boilers (the Ashland Oil facility, located in Ashland, Kentucky). Kentucky elected to exclude all FCCU–CO boilers in the Commonwealth from the NO_X trading program. Today's action removes the requirement from the Kentucky SIP that such units comply with the NO_X SIP Call Phase I by exempting them from the non-EGU portion of the Kentucky NO_X budget. However, Kentucky is still able to meet the phase II budgets through other reductions. For more information regarding the specifics of Phase I source categories and budgets, see 67 FR 17624 (April 11, 2002).

Kentucky is achieving the Phase II goal by setting the control level for large, stationary ICEs at 82 percent, and for diesel and dual fuel stationary ICEs at 90 percent. The application of control levels to ICEs represents a reduction in NO_X emissions originating in Kentucky. Therefore, the large stationary ICE portion of Kentucky's non-EGU NO_X trading budget is being reduced by 2,491 tons of NO_X emissions.

On September 12, 2005, the KEPPC submitted a draft of its SIP regulation revisions, intended to meet the requirements of the NO_X SIP Call Phase II. A public hearing was conducted on October 21, 2005. On March 24, 2006,

SIP revisions were submitted in their final form. The March 24, 2006, submittal stopped the federal implementation plan clock that started under the Clean Air Act (CAA) following EPA's February 8, 2006, finding that Kentucky failed to submit the required SIP revisions for Phase II of the NO_X SIP Call by April 1, 2005 (71 FR 6347, February 8, 2006).

II. Analysis of State Submittal

The September 12, 2005, and March 24, 2006, proposed revisions to the Kentucky SIP include changes to regulation 401 KAR 51:150, which are consistent with EPA requirements for Phase II of the NO_X SIP Call. In addition, the proposed revisions included a change to regulation 401 KAR 51:160, which is consistent with EPA requirements for Phase I of the NO_X SIP Call. The Phase II revisions require the Cabinet to set NO_X emission levels for large stationary ICEs, including large utility and industrial boilers (i.e., engines emitting more than one ton of NO_X per average ozone season day in 1997), except FCCU–CO boilers, at 82 percent. The combination of the Kentucky regulations addressing NO_X emissions from large utility and industrial boilers, cement kilns and ICEs achieve all the necessary NO_X reductions required to meet NO_X Phase II requirements for Kentucky. In light of these reductions, the projected 2007 control period NO_X emissions for the various categories are as follows in tons per year:

- Total EGU NO_X Budget—36,504.
- Total Non-EGU NO_X—Budget 26,259.
- Total NO_X Budget for Stationary Area Sources—31,807.
- Total NO_X Budget for Nonroad Mobile Sources—15,025.
- Total NO_X Budget for Highway Mobile Sources—53,268.[1]
- Total NO_X Budget for Kentucky—162,863.

The revised non-EGU NO_X budget was 28,750 tons in the January 31, 2002, SIP revision and revised to 26,259 tons in the September 2005 SIP Revision. The large boilers/turbines were reduced from 179 to 64 NO_X ozone season tons due to FCCU–CO boilers being exempted from that category. The large cement kilns remained the same at 1,091 NO_X ozone season tons. The large ICEs went from 3,083 to 577 NO_X ozone season tons by applying the appropriate Phase II reductions. Small and other sources increased from 24,397 to 24,527 tons due to moving Ashland Oil from the large boilers/turbines to this portion of the non-EGU budget. Additionally, there was an error in Kentucky's original inventory for units at the Texas Gas-Jeffersontown facility, resulting in eight more units than initially included in the small/other sources budget. The chart below summarizes the budgets:

SUMMARY OF NON-EGU NO_X EMISSIONS BUDGET

Portion of the non-EGU NO_X emissions budget	January 31, 2002 NO_X SIP Call SIP revision submittal (NO_X ozone season tons)	March 24, 2006 NO_X SIP Call SIP revision submittal (NO_X ozone season tons)
Large Boilers/Turbines*	179	64
Large Cement Kilns	1091	1091
Large ICEs	3083	577
Small/Other Sources	24,397	24,527
Total Non-EGU Emissions	28,750	26,259

* Non-EGU budget that is part of the NO_X SIP Call cap and trade program.

III. Proposed Action

EPA is proposing to approve the aforementioned changes to the SIP, including Kentucky's NO_X SIP Call Phase II budget. This SIP revision is consistent with section 110 of the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this proposed 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 proposed 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 CAA; 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,

[1] This NO_X Budget is not intended for the purposes of implementing transportation conformity requirements. Refer to the attainment demonstration, maintenance plan or reasonable further progress plan for the particular nonattainment and/or maintenance area(s) for the appropriate motor vehicle emissions budget for an area for transportation conformity purposes.

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.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 18, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–12557 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2002–0043; FRL–8403–8]

Pesticide Tolerance Nomenclature Changes; Proposed Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is proposing this action to establish a uniform listing of commodity terms.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2002–0043, must be received on or before July 28, 2009.

ADDRESSES: Submit your comments, identified by docket ID number EPA–HQ–OPP–2002–0043, 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 Building), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2002–0043. 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 Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9362; e-mail address: schaible.stephen@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 111).
- Animal production (NAICS 112).
- Food manufacturer (NAICS 311).
- Pesticide manufacturer (NAICS 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. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0043. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *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

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary database entitled *Food and Feed Commodity Vocabulary*. The database was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the ''preferred commodity term'' as listed in the aforementioneddatabase. This is the nineth in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. Eight final rules, revising pesticide tolerance nomenclature, have published in the **Federal Register**: June 19, 2002 (67 FR 41802) (FRL–6835–2); June 21, 2002 (67 FR 42392) (FRL–7180–1); July 1, 2003 (68 FR 39428) (FRL–7308–9) and (68 FR 39435) (FRL–7316–9); December 13, 2006 (71 FR 74802) (FRL–8064–3); September 18, 2007 (72 FR 53134) (FRL–8126–5) (corrected on October 31, 2007 (72 FR 61535) (FRL–8151–4); and October 10, 2008 (73 FR 60151) (FRL–8376–1). This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180. Refer to the unit entitled **BACKGROUND** in the nine documents listed above for descriptions of the commodity term revisions.

III. Statutory and Exective Order Reviews

This document proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or 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). 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); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underyling regulations. This technical amendment will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as

specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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 19, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be 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), 346(a) and 371.

2. Section 180.110 is amended by removing the entry for ''Cabbage, chinese,'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.110 Maneb; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * * * *		
Cabbage, Chinese, bok choy	10	None
Cabbage, Chinese, napa	10	None
* * * * *		

* * * * *

3. Section 180.111 is amended by removing the entries for ''Alfalfa,'' ''Bean,'' ''Beet (including tops),'' ''Clover,'' ''Corn, forage,'' ''Corn, grain, postharvest,'' ''Onion (including green onion),'' ''Salsify (including tops),'' ''Soybean (dry and succulent),'' ''Squash, summer and winter,'' and ''Turnip (including tops)'' and alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.111 Malathion; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Alfalfa, forage	135
Alfalfa, hay	135
* * * * *	
Bean, dry seed	8
Bean, succulent	8
Beet, garden, roots	8
Beet, garden, tops	8
* * * * *	
Clover, forage	135
Clover, hay	135
* * * * *	
Corn, field, forage	8
Corn, field, grain, postharvest	8
* * * * *	
Corn, pop, grain, postharvest	8
Corn, sweet, forage	8
* * * * *	
Onion, bulb	8
Onion, green	8
* * * * *	
Salsify, roots	8
Salsify, tops	8
* * * * *	
Soybean, seed	8
Soybean, vegetable, succulent	8
* * * * *	
Squash, summer	8
Squash, winter	8
* * * * *	
Turnip, greens	8
Turnip, roots	8
* * * * *	

* * * * *

4. Section 180.121 is amended as follows:

a. By removing the entry for ''Corn'' from the table in paragraph (a).

b. By removing the entry for ''Vetch'' from the table in paragraph (e).

c. By adding alphabetically the following entries to the tables in paragraphs (a) and (e) to read as follows:

§ 180.121 Methyl parathion; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * *		
Corn, field, grain	1.0	None
Corn, pop, grain	1.0	None
* * * * *		
Corn, sweet, kernel plus cob with husks removed	1.0	None
* * * * *		

* * * * *

(e) * * *

Commodity	Parts per million
* * * * *	
Vetch, forage	1
Vetch, hay	1

5. Section 180.149 is amended by removing the entry for ''Corn, grain, postharvest'' and adding alphabetically the following entries to the table in paragraph (a)(2) to read as follows:

§ 180.149 Mineral oil; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
Corn, field, grain, postharvest	200
Corn, pop, grain, postharvest	200
* * * * *	

* * * * *

6. Section 180.176 is amended by removing the entries for ''Barley, milled feed fractions,'' ''Corn, forage,'' ''Corn, stover,'' ''Kidney,'' ''Liver,'' ''Oat, milled feed fractions,'' and ''Wheat, milled byproducts'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.176 Mancozeb; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Barley, bran	20
Barley, flour	20
* * * * *	
Barley, pearled barley	20
* * * * *	
Cattle, kidney	0.5
Cattle, liver	0.5
* * * * *	
Corn, field, forage	5
* * * * *	
Corn, field, stover	5
Corn, pop, stover	5
Corn, sweet, forage	5
* * * * *	
Corn, sweet, stover	5
* * * * *	
Goat, kidney	0.5
Goat, liver	0.5
* * * * *	
Hog, kidney	0.5
Hog, liver	0.5
Horse, kidney	0.5
Horse, liver	0.5
* * * * *	
Oat, flour	20
* * * * *	
Oat, groats/rolled oats	20
* * * * *	
Poultry, kidney	0.5
Poultry, liver	0.5
* * * * *	
Sheep, kidney	0.5
Sheep, liver	0.5
* * * * *	
Wheat, bran	20
Wheat, flour	20
Wheat, germ	20
* * * * *	
Wheat, middlings	20
Wheat, shorts	20
* * * * *	

* * * * *

7. Section 180.205 is amended by removing the entry for ''Mint, hay,'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Peppermint, tops	0.5
* * * * *	
Spearmint, tops	0.5
* * * * *	

* * * * *

8. Section 180.222 is amended by removing the entry for ''Corn, grain'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.222 Prometryn; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, grain	0.25
Corn, pop, grain	0.25
* * * * *	

* * * * *

9. Section 180.225 is amended by removing the entry for ''Cabbage, Chinese'' and adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.225 Phosphine; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Cabbage, Chinese, bok choy	0.01
Cabbage, Chinese, napa	0.01
* * * * *	

* * * * *

10. Section 180.235 is amended by revising paragraph (a)(2) to read as follows:

§ 180.235 Dichlorvos; tolerances for residues.

(a) *General.* * * *

(2) The tolerance of 0.1 part per million prescribed by 21 CFR 556.180 for negligible residues of 2,2-dichlorovinyl dimethyl phosphate inhog, fat; hog, meat; hog, meat byproducts; and hog, skin covers both its use as an anthelmintic in swine feed and as an insecticide applied directly to swine.

* * * * *

11. Section 180.253 is amended by removing the entries for ''Alfalfa,'' ''Cabbage, chinese,'' ''Corn forage,'' ''Corn, grain (inc pop),'' ''Corn, stover,'' and ''Mint, hay,'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.253 Methomyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
Alfalfa, forage	10
Alfalfa, hay	10
* * * * *	
Cabbage, Chinese, bok choy	5
Cabbage, Chinese, napa	5
* * * * *	
Corn, field, forage	10
Corn, field, grain	0.1
Corn, field, stover	10
Corn, pop, grain	0.1
Corn, pop, stover	10
* * * * *	
Corn, sweet, forage	10
Corn, sweet, stover	10
* * * * *	
Peppermint, tops	2
* * * * *	
Spearmint, tops	2
* * * * *	

* * * * *

12. Section 180.254 is amended by removing the entries for ''Corn, forage (of which no more than 5 ppm are carbamates),'' ''Corn, grain (including popcorn) (of which no more than 0.1 ppm is carbamates),'' and ''Corn, stover (of which no more than 5 ppm are carbamates)'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.254 Carbofuran; tolerances forresidues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage (of which no more than 5 ppm are carbamates)	25
Corn, field, grain (of which no more than 0.1 ppm is carbamates)	0.2
Corn, field, stover (of which no more than 5 ppm are carbamates)	25
Corn, pop, grain (of which no more than 0.1 ppm is carbamates)	0.2
Corn, pop, stover (of which no more than 5 ppm are carbamates)	25
Corn, sweet, forage (of which no more than 5 ppm are carbamates)	25
* * * * *	
Corn, sweet, stover (of which no more than 5 ppm is carbamates)	25
* * * * *	

* * * * *

13. Section 180.261 is amended by removing the entry for ''Alfalfa'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.261 *N*-(Mercaptomethyl)phthalimide *S*-(*O*,*O*-dimethylphosphorodithioate) and its oxygen analog; tolerances for residues.

(a) * * *

Commodity	Parts per million
Alfalfa, forage	40
Alfalfa, hay	40
* * * * *	

* * * * *

14. Section 180.262 is amended by removing the entries for ''Corn, forage,'' ''Corn, grain,'' and ''Corn, stover,'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	0.02
Corn, field, grain	0.02
Corn, field, stover	0.02
Corn, pop, grain	0.02
Corn, pop, stover	0.02
Corn, sweet, forage	0.02
* * * * *	
Corn, sweet, stover	0.02

* * * * *

15. Section 180.275 is amended by removing the entry for ''Mint hay'' and adding alphabetically the following entries to the table in paragraph (c) to read as follows:

§ 180.275 Chlorothalonil; tolerances forresidues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Peppermint, tops	2

Commodity	Parts per million
* * * * *	
Spearmint, tops	2

* * * * *

16. Section 180.284 is amended by removing the entry for ''Grass (rangeland)'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.284 Zinc phosphide; tolerances forresidues.

(a) * * *

Commodity	Parts per million
* * * * *	
Grass, rangeland, forage	0.1
Grass, rangeland, hay ..	0.1
* * * * *	

* * * * *

17. Section 180.288 is amended by removing the entries for ''Corn, grain'' and ''Corn, stover'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.288 2-(Thiocyanomethylthio)benzothiazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, grain	0.1
Corn, field, stover	0.1
Corn, pop, grain	0.1
Corn, pop, stover	0.1
* * * * *	

18. Section 180.331 is amended by removing the entry for ''Clover,'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.331 4-(2,4-Dichlorophenoxy)butyric acid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Clover, forage	0.2
Clover, hay	0.2
* * * * *	

19. Section 180.377 is amended by removing the entry for ''Wheat, milled byproducts'' and adding alphabetically the following entries to the table in paragraph (b) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Wheat, bran	0.10	12/31/08
Wheat, flour	0.10	12/31/08
Wheat, germ	0.10	12/31/08
* * * * *		
Wheat, middlings ..	0.10	12/31/08
Wheat, shorts	0.10	12/31/08

20. Section 180.379 is amended by removing the entries for ''Corn, forage,'' ''Corn, grain,'' and ''Corn, stover'' and adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-α- (1-methylethyl) benzeneacetate; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	50.0
Corn, field, grain	0.02
Corn, field, stover	50.0
Corn, pop, grain	0.02
Corn, pop, stover	50.0
Corn, sweet, forage	50.0
* * * * *	
Corn, sweet, stover	50.0
* * * * *	

* * * * *

21. Section 180.408 is amended as follows:

a. By removing the entries for ''Potato, processed (including potato, chips),'' and ''Tomato, processed'' from the table in paragraph (a).

b. By removing the entries for ''Barley, milling fractions'' and ''Oat milling fractions,'' and ''Wheat, milling fractions'' from the table in paragraph (d).

c. By adding alphabetically the following entries to the tables in paragraphs (a) and (d) to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Potato, chips	4.0
Potato, granules, flakes	4.0
* * * * *	
Potato, wet peel	4.0
* * * * *	
Tomato, paste	3.0
Tomato, puree	3.0
* * * * *	

* * * * *

(d) * * *

Commodity	Parts per million
Barley, bran	1.0
Barley, flour	1.0
* * * * *	
Barley, pearled barley ..	1.0
* * * * *	
Oat, flour	1.0
* * * * *	
Oat, groats, rolled oats	1.0
* * * * *	
Wheat, bran	1.0
* * * * *	
Wheat, flour	1.0
* * * * *	
Wheat, germ	1.0
* * * * *	
Wheat, middlings	1.0
Wheat, shorts	1.0
* * * * *	

* * * * *

22. Section 180.411 is amended by removing the entry for''Cotton, oil'' and adding alphabetically the following entry to the table in paragraph (a) to read as follows:

§ 180.411 Fluazifop-P-butyl; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Cotton, refined oil	0.2
* * * * *	

23. Section 180.419 is amended by revising the table in paragraph(a)(2) to read as follows:

§ 180.419 Chlorpyrifos-methyl; tolerances for residues.

(a) *General.* * * *

(2) * * *

Commodity	Parts per million
Barley, bran	90
Barley, pearled barley ..	90
Rice, bran	30
Rice, hulls	30
Rice, polished rice	30
Sorghum, grain, bran ...	90
Wheat, bran	30
Wheat, germ	30
Wheat, middlings	30
Wheat, shorts	30

* * * * *

24. Section 180.431 is amended by removing the entries for ''Barley, milled fractions (except flour),'' ''Grass,forage and hay,'' ''Mint, hay,'' and ''Wheat, milled fractions (except flour),'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Barley, bran	12
* * * * *	
Barley, pearled barley	12
* * * * *	
Grass, forage	500.0
Grass, hay	500.0
* * * * *	
Peppermint, tops	3.0
* * * * *	
Spearmint, tops	3.0
* * * * *	
Wheat, bran	12
* * * * *	
Wheat, germ	12
* * * * *	
Wheat, middling	12
Wheat, shorts	12
* * * * *	

* * * * *

25. Section 180.435 is amended by removing the entry for ''Tomato, concentrated products'' and adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.435 Deltamethrin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Tomato, paste	1.0
Tomato, puree	1.0
* * * * *	

* * * * *

26. Section 180.436 is amended by removing the entry for ''Tomato, pomace'' and adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.436 Cyfluthrin and the isomer beta-cyfluthrin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Tomato, dry pomace	5.0
Tomato, wet pomace	5.0
* * * * *	

* * * * *

27. Section 180.440 is amended by removing the entries for ''Corn, field, fodder and forage, pop and sweet'' and ''Corn, field, grain and pop'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.440 Tefluthrin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Corn, field, forage	0.06
Corn, field, grain	0.06
Corn, field, stover	0.06
Corn, pop, grain	0.06
Corn, pop, stover	0.06
Corn, sweet, forage	0.06
* * * * *	
Corn, sweet, stover	0.06
* * * * *	

* * * * *

28. Section 180.442 is amended by removing the entries for ''Corn, forage,'' ''Corn, grain (field, seed, and pop),'' and ''Corn, stover'' and adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	3.0
Corn, field, grain	0.05
Corn, field, stover	5.0
Corn, pop, grain	0.05
Corn, pop, stover	5.0
Corn, sweet, forage	3.0
* * * * *	
Corn, sweet, stover	5.0
* * * * *	

* * * * *

29. Section 180.443 is amended by removing the entry for ''Grape pomace (wet and dry)'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Grape, dried pomace	10.0
* * * * *	
Grape, wet pomace	10.0
* * * * *	

* * * * *

30. Section 180.446 is amended by removing the entry for ''Apple, pomace'' and adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Apple, dry pomace	3.0
Apple, wet pomace	3.0
* * * * *	

* * * * *

31. Section 180.449 is amended by removing the entry for ''Mint'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Peppermint, tops	0.010
* * * * *	
Spearmint, tops	0.010
* * * * *	

* * * * *

32. Section 180.452 is amended by removing the entries for ''Corn, forage,'' ''Corn, grain,'' and ''Corn, stover'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.452 Primisulfuron-methyl; tolerancesfor residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	0.10
Corn, field, grain	0.02
Corn, field, stover	0.10
Corn, pop, grain	0.02
Corn, pop, stover	0.10
Corn, sweet, forage	0.10
* * * * *	
Corn, sweet, stover	0.10
* * * * *	

* * * * *

33. Section 180.454 is amended by removing the entries for ''Corn, grain'' and ''Corn, stover'' and adding alphabetically the following entries to the table to read as follows:

§ 180.454 Nicosulfuron, [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl))-N,N-dimethyl]; tolerances for residues.

Commodity	Parts per million
* * * * *	
Corn, field, grain	0.1
Corn, field, stover	0.1
* * * * *	
Corn, pop, grain	0.1
Corn, pop, stover	0.1
* * * * *	

* * * * *

34. Section 180.462 is amended by removing the entries for ''Corn, grain'' and ''Corn, stover'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.462 Pyridate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, grain	0.03
Corn, field, stover	0.03
Corn, pop, grain	0.03
Corn, pop, stover	0.03
* * * * *	

* * * * *

35. Section 180.472 is amended by removing the entries for ''Grape, pomace (wet or dried),'' ''Lettuce, head and leaf,'' and ''Tomato, pomace (wet or dried)'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.472 Imidacloprid; tolerances forresidues.

(a) * * *

Commodity	Parts per million
* * * * *	
Grape, dried pomace	5.0
* * * * *	
Grape, wet pomace	5.0
* * * * *	
Lettuce, head	3.5
Lettuce, leaf	3.5
* * * * *	
Tomato, dry pomace	4.0
* * * * *	
Tomato, wet pomace	4.0
* * * * *	

* * * * *

36. Section 180.476 is amended by removing the entries for ''Apple, pomace'' and ''Grape pomace'' and adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.476 Triflumizole; tolerances forresidues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Apple, dry pomace	2.0
Apple, wet pomace	2.0
* * * * *	
Grape, dried pomace	15.0
* * * * *	
Grape, wet pomace	15.0
* * * * *	

* * * * *

37. Section 180.482 is amended as follows:

a. By removing the entries for ''Apple, pomace'' and ''Tree nut crop group including pistachio'' from the table in paragraph (a)(1).

b. By removing the entries for ''Fat of cattle, goat, hog, horse, and sheep,'' ''Meat byproducts of cattle, goat, hog, horse and sheep,'' and ''Meat of cattle, goat, hog, horse and sheep'' from the table in paragraph (a)(2).

c. By adding alphabetically the following entries to the tables in paragraphs (a)(1) and (a)(2) to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Apple, dry pomace	3.0
Apple, wet pomace	3.0
* * * * *	
Nut, tree, group 14	0.1
* * * * *	
Pistachio	0.1
* * * * *	

(2) * * *

Commodity	Parts per million
Cattle, fat	0.1
Cattle, meat	0.08
Cattle, meat byproducts	0.08
Goat, fat	0.1
Goat, meat	0.08
Goat, meat byproducts	0.08
Hog, fat	0.1
Hog, meat	0.08
Hog, meat byproducts	0.08
Horse, fat	0.1
Horse, meat	0.08
Horse, meat byproducts	0.08
* * * * *	
Sheep, fat	0.1
Sheep, meat	0.08
Sheep, meat byproducts	0.08

* * * * *

38. Section 180.495 is amended by removing the entry for ''Apple pomace'' and by adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Apple, dry pomace	0.5
Apple, wet pomace	0.5
* * * * *	

* * * * *

39. Section 180.515 is amended by removing the entries for ''Fat (cattle, goat, horse, and sheep),'' ''Meat, (cattle, goat, horse, and sheep),'' and ''Meat, byproducts, cattle, goat, horse, and sheep'' and by adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.515 Carfentrazone-ethyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cattle, fat	0.10
Cattle, meat	0.10
Cattle, meat byproducts	0.10
* * * * *	
Goat, fat	0.10
Goat, meat	0.10
Goat, meat byproducts	0.10
* * * * *	
Horse, fat	0.10
Horse, meat	0.10
Horse, meat byproducts	0.10
* * * * *	
Sheep, fat	0.10
Sheep, meat	0.10
Sheep, meat byproducts	0.10
* * * * *	

* * * * *

40. Section 180.517 is amended by removing the entries for ''Fat of cattle, goat, horse and sheep,'' ''Liver of cattle, goat, horse and sheep,'' ''Meat Byproducts, except liver of cattle, goat, horse, and sheep,'' and ''Meat of cattle, goat, horse and sheep'' and adding alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.517 Fipronil; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cattle, fat	0.40
Cattle, liver	0.10
Cattle, meat	0.04
Cattle, meat byproducts, except liver	0.04
* * * * *	
Goat, fat	0.40
Goat, liver	0.10
Goat, meat	0.04
Goat, meat byproducts, except liver	0.04
* * * * *	
Horse, fat	0.40
Horse, liver	0.10
Horse, meat	0.04
Horse, meat byproducts, except liver	0.04
* * * * *	
Sheep, fat	0.40
Sheep, liver	0.10
Sheep, meat	0.04

Commodity	Parts per million
Sheep, meat byproducts, except liver	0.04

* * * * *

41. Section 180.554 is amended by removing the entry for ''Apple pomace'' and by adding alphabetically the following entries to the table in paragraph (a)(1) to read as follows:

§ 180.554 Kresoxim-methyl; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Apple, dry pomace	1.0
Apple, wet pomace ...	1.0
* * * * *	

* * * * *

42. Section 180.615 is amended by removing the entry for ''Wheat, milled byproducts'' and adding alphabetically the following entries to the table in paragraph (d) to read as follows:

§ 180.615 Amicarbazone; tolerances for residues.

* * * * *

(d) * * *

Commodity	Parts per million
* * * * *	
Wheat, bran	0.15
Wheat, flour	0.15
* * * * *	
Wheat, germ	0.15
* * * * *	
Wheat, middlings, ...	0.15
Wheat, shorts	0.15
* * * * *	

[FR Doc. E9–12566 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–415; MB Docket No. 09–7; RM–11424]

Radio Broadcasting Services; McNary, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of William S. Konopnicki, requesting the allotment of Channel 249C1 at McNary, Arizona. Channel 249C1 can be allotted to McNary consistent with the minimum distance separation requirements of the Commission's Rules with the imposition of a site restriction located 0.3 kilometers (0.2 miles) northeast of the community using reference coordinates 34–04–30 NL and 109–51–15 WL.

DATES: Comments must be filed on or before June 29, 2009, and reply comments on or before July 13, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Jeffrey D. Southmayd, Esq., c/o William S. Konopnicki, Southmayd & Miller, 1220 19th Street, NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 09–7, adopted February 18, 2009, and released February 20, 2009. An Erratum, DA 09–1087 was released on May 19, 2009, changing the comments and reply comments dates in this proceeding. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding McNary, Channel 249C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–12534 Filed 5–28–09; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 74, No. 102
Friday, May 29, 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

Forest Service

Umpqua National Forest, Douglas and Jackson Counties, OR; Cow Creek Timber Sale and Hazardous Fuels Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for reducing fire hazard, improving forest stand conditions and resilience to stand replacement fire for wildlife species, including the Northern spotted owl, and restoring fire regimes and historic (fire adapted) stand conditions in and around the Cow Creek and Tiller Wildland Urban Interface (WUI) areas. Fuel loadings and overall stand densities have increased and landscape scale forest structural diversity has been altered due to fire exclusion, increasing the potential size and severity of future wildfires, beyond what might have occurred historically. This EIS will be prepared under the authority of the Healthy Forests Restoration Act (HFRA) and will implement recommendations of the Douglas County Community Wildfire Protection Plans for the WUI's. The project proposes commercial thinning on about 6,300 acres of mid seral and mature unmanaged stands, leaving between 40–90 trees per acre (TPA); commercial thinning on about 2,700 acres of managed second-growth plantations, leaving between 50–90 TPA; non-commercial treatment of fuels on about 4,400 acres using non-commercial thinning, mastication, whip felling, chipping, piling and burning; treating activity-created fuels by underburning, machine piling, masticating, handpile burning, lopping and scattering, and/or yarding tops attached and whole tree yarding; using prescribed fire as the primary method of reducing fuels on about 813 acres; using about ⅛th of a mile of existing unclassified roads to access thinning/treatment areas, then decommissioning after use; building about 27 miles of new temporary spur roads for access, then decommissioning them after use; road reconstruction and maintenance throughout the planning area; and use of existing rock pits. All acreages and miles are approximate and will be refined during sale layout. The project proposes to amend the 1990 Umpqua National Forest Land and Resource Management Plan (LRMP). The planning area is located approximately 34 miles southeast of Roseburg, Oregon. The project is expected to be implemented starting in Fiscal Year 2010. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by 30 days from the date this Notice of Intent appears in the **Federal Register**. The draft environmental impact statement is expected to be available in the fall of 2009 and the final environmental impact statement is expected to be available in the winter of 2010.

ADDRESSES: Send written comments and suggestions concerning this proposal to Clifford J. Dils, Forest Supervisor, c/o Debbie Anderson, IDT Leader, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, OR 97471; you may also submit scoping comments electronically to *comments-pacificnorthwest-umpqua@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: For information about the proposal, contact Joshua Chapman, Cow Creek Project Manager, phone 541–957–3260, e-mail *joshuachapman@fs.fed.us,* or Debbie Anderson, Cow Creek Interdisciplinary Team Leader, phone 541–957–3466, e-mail *danderson01@fs.fed.us,* Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, OR 97471. The proposal is also listed on the Forest's Web site at *http://www.fs.fed.us/r6/umpqua/projects/projects.shtml.*

SUPPLEMENTARY INFORMATION: The planning area being analyzed in the Cow Creek Timber Sale and Hazardous Fuels Reduction Project encompasses almost 45,000 acres, and is bounded by community of Tiller to the North, the Bureau of Land Management (BLM) land to the South and West, and the Rogue River-Siskiyou National Forest to the East. The planning area includes all or portions of T31S, R2W; T31S, R3W; T32S, R1W; T32S, R2W; T32S, R3W; and T33S, R3W, Willamette Meridian, Oregon.

Purpose and Need for Action

The purpose of the Cow Creek Timber Sale and Hazardous Fuels Reduction Project is to reduce the current, uncharacteristically high fire hazard within the project area, increase the within-stand resiliency to stand replacement fire and to increase stand structural diversity. The need for action is focused on three elements:

Element 1: The need to reduce existing and predicted fuel loads and fire hazard in areas identified as high fire hazard within the Cow Creek and Tiller wildland-urban interface areas (WUIs).

Element 2: There is a need to reduce the potential fire size and severity within spotted owl habitat and Late Successional Reserve 223 (which is also spotted owl Critical Habitat).

Element 3: Outside of WUI and LSR, there is a need to alter forest and stand conditions in the planning area to more closely resemble conditions that were maintained by the mixed severity fire regime of the Klamath Province, and a need to move the existing fire regime from current Fire Regime Condition Class III, to a Fire Regime Condition Class II or I.

Proposed Action

The proposed action was developed to address the elements of the purpose and need. It would implement recommendations of the Douglas County Community Wildfire Protection Plans for Cow Creek and Tiller to treat hazardous fuels in the WUIs, and reduce existing stand densities in order to approximate historic stand conditions maintained by a mixed severity fire regime. Specifically the Proposed Action includes the following activities:

- Commercial thinning on about 2,700 acres in managed second growth plantations leaving 50–90 trees per acre (TPA); Proportional thinning and thinning from below on about 6,300 acres in unmanaged late seral conifer stands (leaving 40–90 TPA). The

thinnings would use ground-based and skyline logging systems in both the matrix, riparian reserve, and late successional reserve (LSR) land allocations and would generate an estimated 90 million board feet of timber. Within the late successional reserve, canopy closure would be maintained at about 60% on the approximate 2,850 acres thinned in the LSR to maintain its ability to function as spotted owl habitat. All perennial streams would have a no harvest buffer of 50 feet or greater to protect the primary shade zone. Final no harvest riparian buffers will be designated prior to the Draft EIS and will further reduce the number of acres thinned.

- Treating activity-created fuels (slash) on commercially thinned areas by underburning, machine piling, masticating, handpile burning, lopping and scattering, yarding tops attached or whole tree yarding, or using a combination of the above.
- Non-commercial treatement and/or removal of fuels on about 4,400 acres by non-commercial thinning, mastication, whip felling, chipping, and piling and burning of slash.
- Using prescribed fire to reduce fuels as the primary treatment method on about 813 acres.
- Using about ⅛ of a mile of an existing, unclassified temporary road to access thinning areas then decommissioning after use.
- Building a total of about 27 miles of new temporary spur roads to provide access for logging machinery and for accessing stands for non-commercial treatments, then obliterating them after use.
- Re-opening about 0.5 miles of currently closed system road to provide access to stands, then closing them after use.
- Reconstructing and repairing portions of existing system roads (work would occur along small sections of these roads) including: Road re-alignment; intersection improvement; road widening; slide and/or slump repair; placing or replacing surface rock; reshaping road beds; culvert replacement, and hazard tree felling.
- Maintaining about 88 miles of existing roads including: Grading and shaping of existing road surfaces; dust abatement using magnesium chloride or water; blading road beds and ditches; hazard tree felling; cleaning/maintaining ditches as needed; opening and re-closing existing closed roads; removing debris from the roadway; and cutting of intruding vegetation along roadsides.
- Utilizing the existing Peavine, Brownie, and Stauch Ranch rock pits (including drilling, blasting, rock crushing and rock hauling), along with several rock disposal sites as the rock source for the road work.
- Other connected and similar actions would also be implemented, including noxious weed treatment, pre-commercial thinning, expansion of the Peavine pit, and sump improvement.

Forest Plan Amendments

The 1990 Umpqua National Forest Land and Resource Management Plan (LRMP) would be amended in the following areas:

1. The LRMP does not permit timber harvest in Management Areas 1, except in the event of catastrophic damage; there are about 36 acres of potential commercial treatment planned in MA 1 in order to reduce fuels in the Wildland Urban Interface (WUI) area. The LRMP would be amended to potentially allow timber harvest and tree removal to help reduce the fire risk in the WUI and to allow for more than one year of recovery to the Visual Quality Objective of Retention.

2. The LRMP excludes timber harvest around unique habitats for a distance of 150 feet. The LRMP would be amended to allow for fuel reduction treatments adjacent to some unique habitats in order to reduce existing and predicted fuel loads.

Possible Alternatives

The alternatives to be considered include the No Action Alternative, the Proposed Action, and another alternative that may be developed if scoping identifies any issues with the proposed action.

Lead and Cooperating Agencies

The USDA Forest Service, Umpqua National Forest is the lead agency.

Responsible Official

Clifford J. Dils, Forest Supervisor of the Umpqua National Forest, is the responsible official for this project. The address for the Umpqua National Forest is 2900 NW Stewart Parkway, Roseburg, OR 97471.

Nature of Decision To Be Made

The Forest Supervisor of the Umpqua National Forest will decide whether to implement the action as proposed, whether to take no action at this time, or whether to implement any alternatives that are proposed. The Forest Supervisor will also decide whether to amend the 1990 Umpqua National Forest Land and Resource Management Plan, if an action alternative is chosen.

Preliminary Issues

At this time, no preliminary issues have been identified.

Scoping Process

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. The project has also been listed in the quarterly schedule of proposed actions (SOPA) since January of 2009. A scoping packet, detailing the proposed action, along with maps of the proposal, will be mailed to over 125 interested publics in May of 2009. The scoping effort is intended to identify issues, which may lead to the development of alternatives to the proposed action. Issues that are raised with the proposal may lead to alternative ways to meet the purpose and need of the project.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: May 21, 2009.

Clifford J. Dils,

Forest Supervisor.

[FR Doc. E9–12527 Filed 5–28–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Rural Business Enterprise Grant Program Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the USDA Rural Development mission area, announces the availability of two individual grants: one single $500,000 grant from the passenger transportation funds appropriated for the Rural Business Enterprise Grant (RBEG) program and another single $250,000 grant for Federally Recognized Native American Tribes' (FRNAT) from funds appropriated for the RBEG program. RBS will administer these

awards under the RBEG program and 7 U.S.C. 1932(c)(2) for fiscal year (FY) 2009. Each grant is to be competitively awarded to a qualified national non-profit organization. One grant is for the provision of technical assistance to rural transportation projects. The other grant is for the provision of technical assistance to rural transportation projects operated by FRNAT's only.

DATES: The deadline for receipt of preapplications in the USDA Rural Development State Office is July 13, 2009. Applications received at a USDA Rural Development State Office after that date will not be considered for FY 2009 funding. For further information contact the Rural Development State Office identified in this notice.

ADDRESSES: Entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg,

PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (Rural Development).

Solicitation Opportunity Title: Rural Business Enterprise Grants.

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance Number: 10.769.

Dates: Application Deadline: Completed applications must be received in the USDA Rural Development State Office no later than July 13, 2009, to be eligible for FY 2009 grant funding. Applications received after this date will not be eligible for FY 2009 grant funding.

I. Funding Opportunity Description

The RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)(2)). Regulations are contained in 7 CFR part 1942, subpart G. The primary objective of the program is to improve the economic conditions of rural areas. The program is administered on behalf of RBS at the State level by the USDA Rural Development State Offices. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related non-profit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. Information required to be in the application package includes Forms SF 424, ''Application for Federal Assistance;'' RD 1940–20, ''Request for Environmental Information;'' Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' Restrictions on Lobbying; RD 400–1, ''Equal Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' Letter stating Board authorization to obtain assistance; and Letter certifying citizenship, as referenced in 7 CFR 1942.307(b). For the FRNAT grant, which must benefit Federally Recognized Native American Tribes, at least 75 percent of the benefits of the project must be received by members of Federally Recognized Native American Tribes. The project that scores the greatest number of points based on the RBEG selection criteria and the discretionary points will be selected for each grant. Applications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

Applicants must be qualified national non-profit organizations with experience in providing technical assistance and training to rural communities for the purpose of improving passenger transportation service or facilities. To be considered ''national'' RBS requires a qualified organization to provide evidence that it operates rural transportation assistance programming in multiple States. There is not a requirement to use the grant funds in a multi-State area. Under this notice, grants will be made to qualified, private, non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

Definitions

The definitions are published at 7 CFR 1942.304.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2009.

Total Funding: $750,000.

Approximate Number of Awards: Two.

Average Award: One single $500,000 grant and another single $250,000 grant for FRNAT's.

Anticipated Award Date: September 11, 2009.

III. Eligibility Information

A. Eligible Applicants

To be considered eligible, an entity must be a private non-profit corporation serving rural areas. Grants will be competitively awarded to one or more qualified national organizations.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

Applications will only be accepted from qualified national organizations to provide technical assistance for rural transportation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine

eligibility or are missing required elements.

IV. Fiscal Year 2009 Application and Submission Information

A. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office identified in this Notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov*. Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You may submit all documents electronically through the Web site, including all information typically included on the application and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

All applicants, whether filing applications through *http://www.Grants.gov* or by paper, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711.

Please note that applicants can locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov*.

B. Content and Form of Submission

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided by any interested applicant making a request to a USDA Rural Development State Office listed in this notice.

All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

For multiple-project applications, the average of the individual project scores will be the score for that application.

C. Submission Dates and Times

Application Deadline Date: July 28, 2009.

Explanation of Deadlines: Applications must be in the USDA Rural Development State Office by the deadline date.

V. Application Review Information

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of the additional items required by 7 CFR part 1942, subpart G and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

VII. Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office identified in this Notice.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: May 13, 2009.

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–12496 Filed 5–28–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coastal Zone Management Act Walter B. Jones and NOAA Excellence Awards

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 July 28, 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 Patmarie Nedelka, (301) 713–3155 ext. 127 or *Patmarie.Nedelka@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1990 reauthorization of the Coastal Zone Management Act (CZMA) authorized an awards program to ''implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.'' As authorized in Section 314 of the CZMA, the Walter B. Jones Awards recognize three categories of excellence: Coastal Steward of the Year, Excellence in Local Government, and Excellence in Coastal and Marine Graduate Study. The CZMA authorizes NOAA to conduct public ceremonies to acknowledge such awards, which allows NOAA to fund invitational travel and purchase awards for the Jones Awards.

In conjunction with the Walter B. Jones Awards, NOAA instituted several additional categories of awards, to recognize additional contributions to ocean and coastal resource management, including Volunteer of the Year, Non-governmental Organization of the Year, Excellence in Promoting Cultural and Ethnic Diversity (in honor of Secretary Ronald Brown), Excellence in Business Leadership, and the Susan Snow Cotter Award for Excellence in Ocean and Coastal Resource (NOAA re-named this award in honor of Susan Snow Cotter in 2007).

As part of conducting the awards program, NOAA will distribute a ''Call for Nominations'' to representatives from Federal, state, local and non-governmental organizations and Members of Congress that work in, are knowledgeable of or benefit from, ocean and coastal resource management.

II. Method of Collection

Respondents may submit their nominations by direct mail, email, and fax.

III. Data

OMB Control Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, Local, or Tribal Government; not-for-profit institutions; Members of Congress.
Estimated Number of Respondents: 25.
Estimated Time Per Response: Complete nomination form—30 minutes.
Estimated Total Annual Burden Hours: 13.
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: May 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12498 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 28, 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 Aja Peters-Mason, (978) 281–9195 or *Aja.Peters-Mason@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Thus, as regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance and use of a vessel Interactive Voice Response (IVR) system, a Vessel Monitoring System (VMS) and vessel logbooks to obtain fishery-dependent data to monitor, evaluate, and enforce fishery regulations.

Fishing vessels permitted to participate in federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information, about their fishing trips. Participants in the herring, tilefish and red crab fisheries are also required to make weekly reports on their catch through IVR. In addition, permitted vessels that catch halibut are asked to voluntarily provide additional information on the estimated size of the fish and the time of day caught. The information submitted is needed for the management of the fisheries.

NE multispecies permit holders participating in the special access programs (SAP), the Category B (regular) Days-at-Sea (DAS) program, and fishing in the United States/Canada Resource Sharing Understanding Area are required to use VMS to electronically

submit reports of catch and discards for all trips. The submitted information is necessary to monitor groundfish stocks of concern and prevent overfishing.

II. Method of Collection

Most information is submitted on paper forms, although electronic means may be arranged. In the herring, tilefish and red crab fisheries vessel owners or operators must provide weekly catch information to an IVR system. In the NE Multispecies fishery, vessel owners or operators must declare catch and discards of groundfish species of concern through VMS for all trips.

III. Data

OMB Control Number: 0648–0212.

Form Number: NOAA Forms 88–30 and 88–40.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 3,346.

Estimated Time per Response: 5 minutes per Fishing Vessel Trip Report page (FVTR); 12.5 minutes per response for the Shellfish Log; 4 minutes for a herring or red crab report to the IVR system; 2 minutes for a tilefish report to the IVR system; 30 seconds for voluntary additional halibut information; and 15 minutes to report catch and discards of groundfish stocks of concern through VMS.

Estimated Total Annual Burden Hours: 11,029.

Estimated Total Annual Cost to Public: $111,723.

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 Office of Management and Budget (OMB) approval of this information collection; they also will become a matter of public record.

Dated: May 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12499 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–853, A–570–937]

Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty orders on citric acid and certain citrate salts (citric acid) from Canada and the People's Republic of China (PRC). On May 22, 2009, the ITC notified the Department of its affirmative determinations of material injury to a U.S. industry. *See Citric Acid from Canada and China* (Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Final), USITC Publication 4076, May 2009).

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova (Canada) or Andrea Berton (PRC), AD/CVD Operations, Offices 2 and 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2009, the Department published its affirmative final determinations of sales at less-than-fair-value in the antidumping duty investigations of citric acid from Canada and the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada,* 74 FR 16843 (April 13, 2009); and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009).

On May 22, 2009, the ITC notified the Department of its final determinations pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of citric acid from Canada and the PRC. *See* section 735(b)(1)(A)(i) of the Act.

Scope of the Orders

The scope of these orders includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of these orders also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of these orders does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of these orders includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Provisional Measures

Section 773(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not

remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of the exporters that accounted for a significant proportion of exports of the subject merchandise in the investigations of citric acid from Canada and the PRC, we extended the four-month period to no more than six months. *See Citric Acid and Certain Citrate Salts from Canada: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 70324 (November 20, 2008) (*Citric Acid from Canada Prelim*); and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 70328 (November 20, 2008) (*Citric Acid from the PRC Prelim*).

In these investigations, the six-month period beginning on the date of the publication of the preliminary determinations (*i.e.,* November 20, 2008) ended on May 19, 2009. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of citric acid from Canada and the PRC entered, or withdrawn from warehouse, for consumption on or after May 19, 2009, and before the date of publication of the ITC's final injury determination in the **Federal Register.** Suspension of liquidation will resume on or after the date of publication of the ITC's final injury determination in the **Federal Register**.

Antidumping Duty Orders

On May 22, 2009, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of citric acid from Canada and the PRC.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of citric acid from Canada and the PRC. These antidumping duties will be assessed on all unliquidated entries of citric acid entered from Canada and the PRC, or withdrawn from warehouse, for consumption on or after November 20, 2008, the date on which the Department published its notices of preliminary determination in the **Federal Register,** but prior to May 19, 2009. *See Citric Acid from Canada Prelim,* 73 FR at 70324; and *Citric Acid from the PRC Prelim,* 73 FR at 70328.

On or after the date of publication of the ITC's notice of final determinations in the **Federal Register**, CBP will require, pursuant to section 736(a)(3) of the Act, will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated dumping margins as noted below:

Exporter	Producer	Margin
Canada		
JBL Canada Inc.	JBL Canada Inc.	23.21
All Others		23.21
PRC		
TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.)	TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.)	129.08
Yixing Union Biochemical Co., Ltd.	Yixing Union Biochemical Co., Ltd.	94.61
Anhui BBCA Biochemical Co., Ltd.	Anhui BBCA Biochemical Co., Ltd.	111.85
Anhui BBCA Biochemical Co., Ltd.	China BBCA Maanshan Biochemical Corp.	111.85
A.H.A. International Co., Ltd.	Yixing Union Biochemical Co., Ltd.	111.85
A.H.A. International Co., Ltd.	Nantong Feiyu Fine Chemical Co., Ltd.	111.85
High Hope International Group Jiangsu Native Produce IMP & EXP Co., Ltd..	Yixing Union Biochemical Co., Ltd.	111.85
Huangshi Xinghua Biochemical Co., Ltd.	Huangshi Xinghua Biochemical Co., Ltd.	111.85
Lianyungang JF International Trade Co., Ltd.	TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.)	111.85
Laiwu Taihe Biochemistry Co., Ltd.	Laiwu Taihe Biochemistry Co., Ltd.	111.85
Lianyungang Shuren Scientific Creation Import & Export Co., Ltd..	Lianyungang Great Chemical Industry Co., Ltd.	111.85
Penglai Marine Bio-Tech Co. Ltd.	Penglai Marine Bio-Tech Co. Ltd.	111.85
RZBC Imp & Exp. Co., Ltd./RZBC Co., Ltd./RZBC (Juxian) Co., Ltd..	RZBC Co., Ltd.	111.85
RZBC Imp & Exp. Co., Ltd./RZBC Co., Ltd./RZBC (Juxian) Co., Ltd..	RZBC (Juxian) Co., Ltd.	111.85
RZBC Imp & Exp. Co., Ltd./RZBC Co., Ltd./RZBC (Juxian) Co., Ltd..	Lianyungang Great Chemical Industry Co., Ltd.	111.85
Shihezi City Changyun Biochemical Co., Ltd.	Shihezi City Changyun Biochemical Co., Ltd.	111.85
Weifang Ensign Industry Co., Ltd.	Weifang Ensign Industry Co., Ltd.	111.85
PRC–Wide Entity		156.87

This notice constitutes the antidumping duty orders with respect to citric acid from Canada and the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit,

Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: May 26, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–12645 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp from Thailand: Notice of Extension of Time Limit for the Final Results of the Third Administrative Review

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

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or David Goldberger at (202) 482–4136, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On March 9, 2009, the Department of Commerce (the Department) published a notice for the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand covering the period February 1, 2007, through January 31, 2008. *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 10000 (March 9, 2009). The final results for this administrative review are currently due no later than July 7, 2009, 120 days from the date of publication of the preliminary results of review.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department requires additional time to complete this review because we conducted the sales verification after the preliminary results and, therefore, case and rebuttal briefs will not be received until May 29, 2009, and June 9, 2009, respectively. Thus, it is not practicable to complete this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than September 8, 2009.

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

Dated: May 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–12573 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Notice of Countervailing Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (''ITC''), the Department is issuing a countervailing duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC''). On May 22, 2009, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry. *See Citric Acid and Certain Citrate Salts from Canada and China,* USITC Pub. 4076, Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Final) (May 2009).

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: David Neubacher or Shelly Atkinson, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5823 and (202) 482–0116, respectively.

Background

On April 13, 2009, the Department published its final determination in the countervailing duty investigation of citric acid from the PRC. *See Citric Acid and Certain Citrate Salts From People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009).

On May 22, 2009, the ITC notified the Department of its final determination pursuant to section 705(b)(1)(A)(i) of the Tariff Act of 1930, as amended (''the Act''), that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC. *See Citric Acid and Certain Citrate Salts from Canada and China,* USITC Pub. 4076, Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Final) (May 2009).

Scope of the Order

The scope of this order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of this order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), respectively.

Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Countervailing Duty Order

On May 22, 2009, in accordance with section 705(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing citric acid is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of citric acid from the PRC.

Therefore, countervailing duties will be assessed on all unliquidated entries of citric acid from the PRC entered, or withdrawn from warehouse, for consumption on or after September 19, 2008, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register,**[1] and before January 17, 2009, the date the Department instructed U.S. Customs and Border Protection (''CBP'') to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of citric acid made on or after January 17, 2009, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective January 17, 2009, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation for citric acid from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise as noted below.

Exporter/Manufacturer	Net subsidy rate (percent)
TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.)	12.68
Yixing Union Biochemical Co., Ltd.; and Yixing Union Cogeneration Co., Ltd.	3.60
Anhui BBCA Biochemical Co., Ltd.	118.95
All-Others	8.14

This notice constitutes the countervailing duty order with respect to citric acid from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: May 26, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–12642 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 73 FR 54367 (September 19, 2008).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP36

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of Availability.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the adoption of its Endangered Species Act (ESA) Recovery Plan (Recovery Plan) for the Lake Ozette Sockeye Salmon (*Oncorhynchus nerka*) Evolutionarily Significant Unit (ESU). This Recovery Plan was prepared by NMFS' Northwest Region and underwent public review. The final Recovery Plan for Lake Ozette Sockeye contains revisions and additions in consideration of public comments received on the draft Recovery Plan.

ADDRESSES: Additional information about the Recovery Plan may be obtained by writing to Rosemary Furfey, National Marine Fisheries Service, 1201 N.E. Lloyd Blvd., Suite 1100, Portland, OR 97232, or calling (503) 231–2149.

Persons wishing to read the Recovery Plan can obtain an electronic copy (i.e., CD-ROM) from Sharon Houghton by calling (503) 230–5418, or by emailing a request to *Sharon.Houghton@noaa.gov*, with the subject line ''CD-ROM Request for Final ESA Recovery Plan for Lake Ozette Sockeye Salmon.'' NMFS' summary of and response to public comments on the draft Recovery Plan for Lake Ozette Sockeye Salmon will be included on the CD-ROM. Electronic copies of these documents are also available on-line via the NMFS' website, *www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/Lake-Ozette-Plan.cfm.*

FOR FURTHER INFORMATION CONTACT: Rosemary Furfey, NMFS Lake Ozette Salmon Recovery Coordinator at (503) 231–2149, or Elizabeth Gaar, NMFS Salmon Recovery Division at (503) 230–5434.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans, to the extent practicable, incorporate (1) objective, measurable criteria, which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions that may be necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote recovery of a particular species.

NMFS' goal is to restore endangered and threatened Pacific salmon ESUs and steelhead distinct population segments (DPSs) to the point that they are again self-sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. Therefore, the agency supports and participates in locally led collaborative efforts to develop recovery plans, involving local communities, state, tribal, and Federal entities, and other stakeholders. As the lead ESA agency for listed salmon, NMFS is responsible for reviewing these locally produced recovery plans and

deciding whether they meet ESA statutory requirements and merit adoption as ESA recovery plans.

In 2005, NMFS and the Lake Ozette Steering Committee (Steering Committee), an existing, locally based citizen group, began working together to write a plan for the recovery of Lake Ozette sockeye salmon (originally listed as threatened on March 25, 1999 (64 FR 14528)). The goal was to produce a plan that meets ESA requirements for recovery plans as well as the State of Washington's recovery planning outline and guidance (WDFW 2003). The Makah and Quileute Tribes, Olympic National Park, Clallam County, local land owners, Washington Governor's Salmon Recovery Office, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, NMFS, U.S. Environmental Protection Agency, North Olympic Peninsula Lead Entity, private timber companies, and local citizens comprised the Steering Committee and have met periodically since 1981 to discuss natural resource issues related to sockeye salmon. The diverse representation on the Steering Committee has provided a broad and unique perspective that has lent great value to the recovery planning process.

To ensure that recovery plans are scientifically sound, NMFS has appointed teams of scientists with expertise in salmon species to provide scientific support for recovery planning in the Northwest. These technical recovery teams (TRTs) include biologists from NMFS, state, tribal, and local agencies, academic institutions, and private consulting groups. The Puget Sound TRT provided two reports for the Lake Ozette sockeye salmon recovery planning process: (1) a description of the Lake Ozette sockeye salmon population (Currents *et al.* 2006) and (2) viability criteria for the sockeye (Rawson *et al.* 2007). The TRT also reviewed the Lake Ozette Sockeye Limiting Factors Analysis (Haggerty *et al.* 2007), the proposed recovery plan, and coordinated an independent peer review process. Frequent Steering Committee meetings enabled NMFS and the Puget Sound TRT to share draft recovery plan products and seek review and comment as the draft plan was developed. Based on this iterative process, the availability of the Proposed Recovery Plan for Lake Ozette Sockeye Salmon was published in the **Federal Register** on April 23, 2008, and public comments were solicited (73 FR 21913). Other supporting documents were also made available for public review and comment, including the Draft Limiting Factors Analysis and draft Puget Sound TRT reports.

NMFS received 20 comment letters, by mail, facsimile, or e-mail, on the Proposed Recovery Plan. Public hearings were held between April 23, 2008, and June 23, 2008, in Port Angeles, WA, and Sekiu, WA. NMFS summarized the public comments and oral testimony and prepared responses, now available on the NMFS website at: *www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/Lake-Ozette-Plan.cfm*. NMFS revised its Proposed Recovery Plan based on comments received.

Consistent with adoption of this final Recovery Plan, NMFS will seek to implement the actions for which it has authority, to work cooperatively on implementation of other actions, and to encourage other Federal agencies to implement Recovery Plan actions for which they have responsibility and authority. NMFS will also encourage the State of Washington to seek similar implementation commitments from state agencies and local governments. NMFS expects the Recovery Plan to help NMFS and other Federal agencies take a more consistent approach to future ESA section 7 consultations under the ESA and other ESA decisions. For example, the Recovery Plan will provide greater biological context for the effects that a proposed action may have on the listed ESU. This context will be enhanced by adding Recovery Plan science to the ''best available information'' for section 7 consultation opinions, section 10 habitat conservation plans, and other ESA decisions. Such information includes viability criteria for the ESU and its independent populations; better understanding of and information on limiting factors and threats impacting the ESU; better information on priority areas for addressing specific limiting factors; and better geographic context for where the ESU can tolerate varying levels of risk.

The Recovery Plan

Lake Ozette, its perimeter shore, and most of the Ozette River, which forms the outlet of the lake to the estuary and Pacific Ocean, are included in the 922,000–acre Olympic National Park. This Recovery Plan complements, recognizes, and works within the authorities of the Olympic National Park, Clallam County, the Forest Practices Habitat Conservation Plan, and tribal trust and treaty rights, and does not augment or supersede these or other authorities.

The Recovery Plan is based on a series of hypotheses about what is limiting the survival of Lake Ozette sockeye salmon. These hypotheses are based on the best available current knowledge about Lake Ozette sockeye salmon. These hypotheses are designed to be tested in the course of time through monitoring the fish, their environment, and the effects of the actions that may be taken to protect and improve the Lake Ozette sockeye's ecosystem and survival chances. The process of designing actions based on best available information, then monitoring the results to find out what works best and changing the actions as appropriate, is called adaptive management. This Recovery Plan is intended as a tool for adaptive management for Lake Ozette sockeye salmon recovery and is to be implemented within the range of the Lake Ozette Sockeye Salmon ESU.

ESU Addressed and Planning Area

Lake Ozette sockeye salmon were listed under the ESA on March 25, 1999 (64 FR 14528), as a species threatened with becoming endangered throughout all or a significant portion of its range. The Lake Ozette Sockeye Salmon ESU is unique among other ESA-listed salmon in being made up of only one population (Currens *et al.* 2006), with an inland range that is limited to a single freshwater watershed a short distance from the ocean. The Lake Ozette watershed has an unusual potential for protection and restoration of landscape processes to support long-term salmon survival, because it is relatively undeveloped, has a relatively low human population density, and the lake itself is located within the Olympic National Park.

The single population of Lake Ozette sockeye salmon currently contains five distinct spawning aggregations that are described in the Recovery Plan as subpopulations. The subpopulations can be grouped according to whether they spawn in tributaries or near lake beaches. Lake Ozette sockeye salmon are distinguished from other Washington sockeye salmon ESUs based on unique genetic characteristics, early river entry, the relatively large adult body size, and larger average smolt size relative to other coastal Washington sockeye salmon populations.

Lake Ozette is situated on the coastal plain between the Pacific Ocean and the Olympic Mountains. The lake is approximately 8 miles (12.9 km) long from north to south and 2 miles (3.2 km) wide, irregularly shaped, and containing several bays, distinct points, and three islands. With a surface area of 11.8 mi^2 (30.6 km^2, 7,550 acres; 3,056 ha), Lake Ozette is the third largest natural lake in Washington State. The Ozette River

drains the lake from its north end and travels approximately 5.3 miles (8.5 km) along a sinuous course to the Pacific Ocean. The total drainage area of the Ozette watershed at the confluence with the Pacific Ocean is 88.4 mi^2 (229 km^2).

Historically, the Ozette watershed supported thriving populations of sockeye salmon, which were an important element of the fisheries of the Makah and Quileute Tribes, as well as an important subsistence species for early European-American settlers in the watershed. The peak harvest of 17,500 fish was recorded in 1949, but abundance decreased rapidly in the following decades. Because of declining numbers, tribal commercial harvest ceased in 1974 and all tribal ceremonial and subsistence harvest ceased in 1982.

The Plan's Recovery Goals and Recovery Criteria

The Recovery Plan's goal is for the Lake Ozette sockeye salmon population to reach the point that it is naturally self-sustaining, no longer needs the protection of the ESA, and can be delisted. In addition, a recovery plan can have ''broad-sense'' goals that may go beyond the requirements for delisting to acknowledge social, cultural, or economic values regarding the listed species. NMFS and the Lake Ozette Steering Committee crafted the following vision statement describing desirable future conditions for the Lake Ozette sockeye salmon and its human and biological setting:

''The naturally spawning Lake Ozette sockeye salmon population is sufficiently abundant, productive, and diverse (in terms of life histories and geographic distribution) to provide significant ecological, cultural, social, and economic benefits. Protection and restoration of ecosystems have sustained processes necessary to maintain sockeye as well as other salmon, steelhead, and wildlife species. Community livability, economic well-being, and treaty-reserved fishing rights have benefited by balancing salmon recovery with management of local land use and fishery economies.''

To meet the ESA requirements for objective, measurable criteria for delisting, the Recovery Plan provides biological recovery criteria based on the Puget Sound TRT viability criteria for Lake Ozette sockeye salmon, as well as ''threats'' criteria based on the listing factors defined in ESA section 4(a)(1).

Biological Recovery Criteria

The Puget Sound TRT provided viability criteria for Lake Ozette sockeye salmon in terms of the four ''viable salmonid populations'' (VSP) parameters defined in NMFS technical memorandum, *Viable salmonid populations and the recovery of evolutionarily significant units* (McElhany *et al.* 2000). The Puget Sound TRT's viability criteria for Lake Ozette sockeye salmon are as follows:

Abundance: Approximately 31,250–121,000 adult spawners, over a number of years; this planning range is associated with a productivity of 1:1 recruits-per-spawner. NMFS is working with the Puget Sound TRT to develop more specific abundance and productivity targets and a specific number of years that would represent a level upon which to make a delisting decision.

Productivity (Growth Rate): Stable or increasing.

Spatial Structure: Multiple, persistent, and spatially distinct beach-spawning aggregations, augmented by tributary spawning aggregations.

Diversity: One or more persistent spawning aggregations from each major genetic and life history group historically present within that population. Maintain the distinctness between Lake Ozette sockeye salmon and kokanee.

NMFS, in coordination with the Steering Committee, concluded that the Puget Sound TRT's viability criteria should be the biological recovery criteria of this Recovery Plan.

Threats Criteria

''Threats'' are the human activities or natural events that cause the factors limiting a species' survival. For example, where high water temperatures are identified as a limiting factor, removal of riparian vegetation, which causes loss of shade and results in higher water temperatures, is categorized as the threat. The threats criteria define the conditions under which the listing factors, or threats, can be considered to be addressed or mitigated. Threats criteria are provided in Section 3.3.3 of the Recovery Plan.

Causes for Decline and Current Threats

The 1999 listing of the Lake Ozette sockeye salmon ESU as threatened under the ESA was primarily attributed to concerns about low abundance and effects of small population genetic and demographic variability. A more thorough identification of limiting factors is provided in the Lake Ozette Sockeye Limiting Factors Analysis (Haggerty *et al.* 2009). Based on the best available information and analysis, the Lake Ozette Steering Committee's Technical Workgroup evaluated and rated each of the limiting factors hypotheses for its contribution to sockeye population or subpopulation mortality by life stage.

Some limiting factors, habitat conditions, and life histories were shared among all subpopulations, while others vary. In the Limiting Factors Analysis, the subpopulations were grouped based on spawning environment, i.e., tributary vs. beach, and limiting factors were described in three categories: those affecting the entire population; those specific to beach spawners; and those specific to tributary spawners.

Two limiting factors are hypothesized as having a high impact on all Lake Ozette sockeye salmon population segments: piscivorous fish predation on juveniles rearing in the lake, and general marine survival. Limiting factors with moderate impact on all population segments are marine mammal predation on adults re-entering the Ozette River and water quality in the Ozette River.

Limiting factors hypothesized as having a high impact specifically on beach spawners are poor-quality spawning habitat, which decreases survival in the incubation-to-emergence life stage, and predation on adults, eggs, and newly emerged fry. Limiting factors with moderate impact on beach spawners are: seasonal lake level changes; water quality issues, including turbidity and fine sediment; and competition for good quality spawning habitat, which can result in redd superimposition and decreased egg-to-fry survival.

Limiting factors hypothesized as having high impact specifically on tributary spawners are fine sediments, unstable channel, and other water quality issues that reduce spawning habitat quality and result in decreased egg-to-fry survival. High predation on fry during their emigration to the lake was identified as a limiting factor with moderate impact on tributary spawners.

Recovery Strategies and Actions

The Recovery Plan recommends an overall recovery strategy based on current research about the relationships between watershed processes, land use, and freshwater habitat. This information is then related to what is known about sockeye salmon mortality by life stage, and to the hypothesized limiting factors. The result is a hierarchy of types of recovery strategies that can form the basis for setting priorities among potential actions.

The first priority, and likely the most effective type of action, is to assess, protect, and maintain good quality habitat and the processes that create and maintain it. One example would be to protect currently used spawning areas. Another would be for willing landowners to protect forest or streamside areas with conservation easements, where trees could be

allowed to grow large, mature, and eventually fall by natural forces, creating habitat conditions needed by sockeye salmon.

Next in importance and certainty of effectiveness is reconnecting isolated habitat – for example, removing a blockage in the stream, thus allowing salmon more room to spawn and rear.

Third is restoring biological processes of various kinds; this includes a wide range of potential actions. For example: restoring natural predator-prey balance by improving egg-to-fry survival and/or reducing non-native fish species by means of selective fishing; ceasing to remove large woody debris from sections of the lower Ozette River; and assessing sources of sediment and reducing sediment production and delivery to streams.

Directly restoring degraded habitat is of lower priority because it is more difficult, often more costly, and often effective only in the short-term, compared to restoring the processes that create habitat and will continue creating properly functioning habitat over time. However, some direct actions, such as placing large woody debris in carefully chosen areas, will initiate biological processes that are likely to continue naturally if accompanied by appropriate long-term riparian management. Creating new habitat is significantly more difficult than working to protect and restore existing habitat; creating new habitat is therefore of lowest priority, although in some circumstances it may be the only alternative.

NMFS, with input from the Steering Committee, evaluated the sub-basins in the Lake Ozette watershed for their importance as sockeye habitat. The Recovery Plan accordingly provides geographic priorities for recovery actions.

Habitat, harvest, and hatchery factors affecting Lake Ozette sockeye salmon are included in the recovery strategies. Hatchery and harvest management issues are presented and addressed within the context of biological processes.

NMFS and the Lake Ozette Steering Committee developed an extensive list of 121 potential projects/actions. The proposed actions are designed to address the full range of limiting factors for all life cycle stages of Lake Ozette sockeye salmon and are intended to improve the health and ecosystems of these fish.

The proposed actions are in six categories:

- Fisheries management
- Habitat-related actions
- Hatchery supplementation
- Predation-related actions
- Research, monitoring, and adaptive management
- Public education and outreach, which need to be implemented in cooperation with all appropriate permitting authorities (including Olympic National Park), and in the context of existing permits, regulations, agreements, and public processes.

Site-specific Actions

The Recovery Plan recognizes that recovery actions must be implemented at both the regional, or ESU, and watershed, or population, levels. In the case of Lake Ozette sockeye, the ESU contains only one population, so actions taken to benefit the ESU will undoubtedly benefit the sole population. Site-specific actions articulated in this Recovery Plan are intended to link directly to recovery models, watershed processes, locations (including Ozette River, tributaries, estuarine, and nearshore environments), and address primary and secondary limiting factor hypotheses. Details of the site-specific actions can be found in Appendix D of the Plan.

Research, Monitoring, and Adaptive Management

The Recovery Plan identifies the many knowledge gaps and uncertainties involved in designing recovery actions for the Lake Ozette sockeye salmon. Because the proposed recovery actions are based on hypotheses about the relationships between fish, limiting factors, human activities, and the environment, the Recovery Plan recommends research and monitoring to determine recovery progress. Monitoring is the basis for adaptive management the process of adjusting management actions and/or directions based on new information. Research, monitoring, and adaptive management are built into the Recovery Plan.

Time and Cost Estimates

Section 4(f)(1) of the ESA requires that the Recovery Plan include ''estimates of the time required and the cost to carry out those measures needed to achieve the Plan's goal and to achieve intermediate steps toward that goal'' (16 U.S.C. 1533[f][1]). Chapter 9 of the Recovery Plan provides cost estimates for actions where costs are available. Costs for actions that are being implemented as part of ongoing, existing programs are considered ''baseline'' and are not included in Chapter 9 as costs to recover Lake Ozette sockeye salmon. The overall total cost to implement recovery actions for the first 10 years of this plan is estimated to be approximately $46 million. Many of these are one-time costs.

Approximately $100,000 of the estimated implementation cost represents ongoing, annual administrative or infrastructure costs that will likely continue for the duration of implementation of the plan. Thus, it can be inferred that if recovery takes 50 years, another $4 million may be incurred over the long term to continue and maintain habitat improvements.

NMFS estimates that recovery of the Lake Ozette Sockeye Salmon ESU, like recovery for most of the ESA-listed salmon, could take 50 to 100 years. Because many uncertainties exist about how sockeye salmon and their habitat will respond to recovery actions, the costs and recovery actions in this plan focus on the first 10 years of implementation. Actions and costs will be revised over time as part of adaptive management.

Unlike other ESA-listed salmon species in Washington State, the Lake Ozette Sockeye Salmon ESU has not had a state-designated recovery board responsible for developing the recovery plan. Therefore, NMFS is working with the Lake Ozette Steering Committee and other entities, such as the newly formed North Pacific Coast Lead Entity and the Washington Coast Sustainable Salmon Partnership, to make an Implementation Plan. NMFS anticipates that the organizations potentially involved will choose to participate in recognition of the shared benefits of habitat protection and restoration. A detailed Implementation Schedule and further details of an organizational approach to implementation will be produced in 2009.

Conclusions

NMFS concludes that the Recovery Plan meets the requirements of ESA section 4(f) and thus is adopting it as the Recovery Plan for Lake Ozette Sockeye Salmon.

Literature Cited

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Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 22, 2009.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–12558 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP34

Fisheries in the Western Pacific; Amended Marine Conservation Plan for Pacific Insular Areas; Northern Mariana Islands

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the approval of an amended marine conservation plan (MCP) for the Northern Mariana Islands.

DATES: This agency decision is effective October 6, 2008, through October 6, 2011.

ADDRESSES: Copies of the MCP are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Regional Office, at 808–944–2108.

SUPPLEMENTARY INFORMATION: Under Section 204(e)(1)(A)of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, may negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA) to allow foreign fishing within waters of the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands, and at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which the PIAFA applies. Section 204(e)(4) of the Magnuson-Stevens Act requires that prior to entering into a PIAFA, the appropriate Governor and the Council shall develop a three-year MCP containing detailing the uses for funds to be collected by the Secretary under the PIAFA.

Any payments received under a PIAFA shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which funds were collected. In the case of violations by foreign fishing vessels occurring within the EEZ off any Pacific Insular Area, any amount received by the Secretary which is attributable to fines and penalties imposed under the Magnuson-Stevens Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, to be used for fisheries enforcement and for implementation of a MCP. The MCP to be approved by the Secretary must be consistent with the Council's fishery management plans, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects.

In June 2007, the Council approved an MCP for the Commonwealth of the Northern Mariana Islands (CNMI) and recommended its submission to the Secretary for approval. NMFS, designee of the Secretary, received the MCP on March 10, 2008. Following review and revision of the MCP, the Department of Lands and Natural Resources, CNMI, submitted the completed MCP on behalf of the Governor to NMFS on September 23, 2008. That MCP, dated June 2007, satisfied the requirements of MSA Section 204(e), and was approved for the three-year period October 6, 2008, through October 6, 2011 (73 FR 61020, October 15, 2008).

At its 144th meeting in March 2009, the Council approved an amended MCP for the CNMI. On April 9, 2009, the Governor of the CNMI submitted the amended MCP, dated March 2009. The March 2009 document revises the objective related to domestic fisheries development, and the prioritization of projects. The amendments are aimed at further promoting the development and enhancing the economic viability of CNMI fisheries.

The amended MCP contains 12 objectives, listed below, which are consistent with the Council's five existing fishery management plans:

1. Data collection and reporting;
2. Resource assessment and monitoring;
3. Incidental catch, bycatch, and protected species interaction;
4. Habitat assessment and monitoring;
5. Management procedures;
6. Surveillance and enforcement;
7. Promote responsible domestic fisheries development to provide long term economic growth and stability and local food production;
8. Marine conservation education;
9. Public participation;
10. Regional cooperation;
11. Western Pacific demonstration projects; and
12. Performance evaluation.

The MCP identifies 22 programs or projects associated with the MCP objectives for potential funding under a PIAFA, as listed below in order of priority:

1. EEZ enforcement program;
2. Analysis of data on pelagic fishery resources;
3. Commercial harvest monitoring system;
4. Fisheries technology and education program;
5. Longline permit, reporting and quota utilization program;
6. Development of fish marketing plan that includes topics on market identification, transportation, fish products, branding and eco-labeling, and other marketing issues;
7. CNMI commercial fisheries baseline assessment;
8. Regional fisheries meeting and conferences funding assistance;
9. Enhance fishing opportunities by deploying community fish aggregation devices;
10. Vessel monitoring program;
11. Construction of cold storage, fish processing, and fish market facilities;
12. Foreign fishery observer program;
13. Establish fishery management units for the EEZ;

14. Northern islands remote fishing station project;
15. Village based aquaculture project;
16. Charter fishing economic impact study;
17. Bycatch interaction report;
18. Subsistence and recreational harvest monitoring system;
19. Recreational and subsistence fishing economic impact and use study;
20. Foreign fishery management measures;
21. Vessel pollution prevention education program; and
22. Foreign fishing revenue for the Puerto Rico dump cleanup.

This notice announces that NMFS has determined that the amended MCP for the Northern Mariana Islands satisfies the requirements of the Magnuson-Stevens Act and has approved the amended MCP for the three-year period October 6, 2008, through October 6, 2011.

Dated: May 22, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–12553 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review (POR) listed below. If a producer or exporter named in this initiation notice had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

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

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification apply equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2010.

	Period to be reviewed
Antidumping Duty Proceedings	
Russia: Magnesium Metal, A–821–819	4/1/08–3/31/09
PSC VSMPO–AVISMA Corporation Solikamsk Magnesium Works	
The People's Republic of China:	
Certain Activated Carbon[3] A–570–904	4/1/08–3/31/09
Actview Carbon Technology Co., Ltd.	
Alashan Yongtai Activated Carbon Co., Ltd.	
Anhui Hengyuan Trade Co., Ltd.	
Baoding Activated Carbon Factory	
Beijing Broad Activated Carbon Co., Ltd.	
Beijing Haijian Jiechang Environmental Protection Chemicals	
Beijing Hibridge Trading Co., Ltd.	
Beijing Huapeng Environment Protection Materials	
Beijing Pacific Activated Carbon Products Co., Ltd.	
Benbu Jiutong Trade Co., Ltd.	
Calgon Carbon (Tianjin) Co., Ltd.	
Changji Hongke Activated Carbon Co., Ltd.	
Chengde Jiayu Activated Carbon Factory	
Cherishmet Incorporated	
China National Building Materials and Equipment Import Export Corp.	
China National Nuclear General Company Ningxia Activated Carbon Factory	
China Nuclear Ningxia Activated Carbon Plant	
Da Neng Zheng Da Activated Carbon Co., Ltd.	
Datong Carbon Corporation	
Datong Changtai Activated Carbon Co., Ltd.	
Datong City Zouyun County Activated Carbon Co., Ltd.	
Datong Fenghua Activated Carbon	
Datong Forward Activated Carbon Co., Ltd.	
Datong Fuping Activated Carbon Co., Ltd.	
Datong Guanghua Activated Carbon Co., Ltd.	
Datong Hongji Coal Industry	
Datong Hongtai Activated Carbon Co., Ltd.	
Datong Huanqing Activated Carbon Co., Ltd.	
Datong Huaxin Activated Carbon	
Datong Huibao Active Carbon	
Datong Huibao Activated Carbon Co., Ltd.	
Datong Huiyuan Cooperative Activated Carbon Plant	
Datong Juqiang Activated Carbon Co., Ltd.	
Datong Kaneng Carbon Co. Ltd.	
Datong Kangda Activated Carbon Factory	
Datong Locomotive Coal & Chemicals Co., Ltd.	
Datong Municipal Yunguang Activated Carbon Co., Ltd.	
Datong Runmei Activated Carbon Factory	
Datong Tianzhao Activated Carbon Co., Ltd.	
DaTong Tri-Star & Power Carbon Plant	
Datong Weidu Activated Carbon Co., Ltd.	
Datong Xuanyang Activated Carbon Co. Ltd.	
Datong Yunguang Chemicals Plant	
Datong Zuoyun Biyun Activated Carbon Co., Ltd.	
Datong Zuoyun Fu Ping Activated Carbon Plant	
Dezhou Jiayu Activated Carbon Factory	
Dongguan Baofu Activated Carbon	
Dushanzi Chemical Factory	
Fangyuan Carbonization Co., Ltd.	

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Fu Yuan Activated Carbon Co., Ltd. Fujian Jianyang Carbon Plant Fujian Nanping Yuanli Activated Carbon Fuzhou Taking Chemical Fuzhou Yihuan Carbon Great Bright Industrial Hangzhou Hengxing Activated Carbon Hangzhou Linan Tianbo Material Hebei Foreign Trade and Advertising Corporation Hebei Shenglun Import & Export Group Company Hegongye Ninxia Activated Carbon Factory Heilongjiang Provincial Hechang Imp. & Exp. Co., Ltd. Hongke Activated Carbon Co., Ltd. Huaibei Environment Protection Material Plant Huairen Jinbei Chemical Co., Ltd. Huairen Huanyi Purifying Material Huaiyushan Activated Carbon Tec & Sec (Zhuhai) Co., Ltd. Huahui Activated Carbon Company Ltd. Huatai Activated Carbon Huaxin Active Carbon Plant Huzhou Zhonglin Activated Carbon Hz Hengxing Activated Carbon Co. Inner Mongolia Taixi Coal Chemical Industry Limited Company Itigi Corp. Ltd. J&D Activated Carbon Filter Co., Ltd. Jacobi Carbons AB Jiangle County Xinhua Activated Carbon Co., Ltd. Jiangxi Hansom Import Export Co. Jiangxi Huaiyushan Activated Carbon Jiangxi Jinma Carbon Jianou Zhixing Activated Carbon Jiaocheng Xinxin Purification Material Co., Ltd. Jilin Bright Future Chemicals Company, Ltd. Jilin Goodwill Activated Carbon Plant Jilin Province Bright Future Industry and Commerce Co., Ltd. Jing Mao (Dongguan) Activated Carbon Co., Ltd. Jx Huaiyushan Activated Carbon Group Co. Jx Huaiyushan Suntar Active Carbon Kaihua Xingda Chemical Co., Ltd. Kaihua Xinghua Chemical Plant Kemflo (Nanjing) Environmental Tech Kunshan Actview Carbon Technology Langfang Winfield Filtration Co. Link Link Shipping Limited Longyan Wanan Activated Carbon Mindong Lianyi Group Nanjing Mulinsen Charcoal Nantong Ameriasia Advanced Activated Carbon Product Co., Ltd. Ningxia Baota Active Carbon Plant Ningxia Baota Activated Carbon Co., Ltd. Ningxia Blue-White-Black Activated Carbon Ningxia Fengyuan Activated Carbon Co., Ltd. Ningxia Guanghua A/C Co., Ltd. Ningxia Guanghua Activated Carbon Co., Ltd. Ningxia Guanghua Chemical Activated Carbon Co., Ltd. Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. Ningxia Haoqing Activated Carbon Co., Ltd. Ningxia Henghui Activated Carbon Ningxia Honghua Carbon Industrial Corporation Ningxia Huahui Activated Carbon Co., Ltd. Ningxia Huinong Xingsheng Activated Carbon Co., Ltd. Ningxia Jirui Activated Carbon Ningxia Lingzhou Foreign Trade Co., Ltd. Ningxia Luyuangheng Activated Carbon Co., Ltd. Ningxia Mineral & Chemical Limited Ningxia Pingluo County Yaofu Activated Carbon Plant Ningxia Pingluo County Yaofu Activated Carbon Factory Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd. Ningxia Pingluo Yaofu Activated Carbon Factory Ningxia Taixi Activated Carbon Ningxia Tianfu Activated Carbon Co., Ltd. Ningxia Tongfu Coking Co., Ltd. Ningxia Weining Active Carbon Co., Ltd. Ningxia Xingsheng Coal and Active Carbon Co., Ltd.	

	Period to be reviewed
Ningxia Xingsheng Coke and Activated Carbon	
Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd.	
Ningxia Yirong Alloy Iron Co., Ltd.	
Ningxia Zhengyuan Activated	
Nuclear Ningxia Activated Carbon Co., Ltd.	
OEC Logistic Qingdao Co., Ltd.	
Panshan Import and Export Corporation	
Pingluo Xuanzhong Activated Carbon Co., Ltd.	
Pingluo Yu Yang Activated Carbon Co., Ltd.	
Shanghai Activated Carbon Co. Ltd.	
Shanghai Coking and Chemical Corporation	
Shanghai Goldenbridge International	
Shanghai Jiayu International Trading Co. Ltd.	
Shanghai Jinhu Activated Carbon	
Shanghai Mebao Activated Carbon	
Shanhai Xingchang Activated Carbon	
Shanxi Blue Sky Purification Material Co., Ltd.	
Shanxi DMD Corporation	
Shanxi Industry Technology Trading Co., Ltd.	
Shanxi Newtime Co., Ltd.	
Shanxi Qixian Foreign Trade Corporation	
Shanxi Qixian Hongkai Active Carbon Goods	
Shanxi Sincere Industrial Co., Ltd.	
Shanxi Supply and Marketing Cooperative	
Shanxi Tianli Ruihai Enterprise Co.	
Shanxi Xiaoyi Huanyu Chemicals Co., Ltd.	
Shanxi Xinhua Activated Carbon Co., Ltd.	
Shanxi Xinhua Chemical Co., Ltd.	
Shanxi Xinhua Chemical Factory	
Shanxi Xinhua Protective Equipment	
Shanxi Xinshidai Imp. Exp. Co., Ltd.	
Shanxi Xuanzhong Chemical Industry Co., Ltd.	
Shanxi Zuoyun Yunpeng Coal Chemistry	
Shenzhen Sihaiweilong Technology Co.	
Sincere Carbon Industrial Co., Ltd.	
Taining Jinhu Carbon	
Tangshan Solid Carbon Co., Ltd.	
Tianchang (Tianjin) Activated Carbon	
Tianjin Jacobi International Trading Co. Ltd.	
Tianjin Maijin Industries Co., Ltd.	
Tonghua Bright Future Activated Carbon Plant	
Tonghua Xinpeng Activated Carbon Factory	
United Manufacturing International (Beijing) Ltd.	
Valqua Seal Products (Shanghai) Co	
Wellink Chemical Industry	
Xi Li Activated Carbon Co., Ltd.	
Xi'an Shuntong International Trade & Industrials Co., Ltd.	
Xiamen All Carbon Corporation	
Xingan County Shenxin Activated Carbon Factory	
Xingtai Coal Chemical Co., Ltd.	
Xinhua Chemical Company Ltd.	
Xinyuan Carbon	
Xuanzhong Chemical Industry	
Yangyuan Hengchang Active Carbon	
Yicheng Logistics	
Yinchuan Lanqiya Activated Carbon Co., Ltd.	
Yinyuan Carbon	
YunGuan Chemical Factory	
Yuanguang Activated Carbon Co., Ltd.	
Yuyang Activated Carbon Co., Ltd.	
Zhejiang Quizhou Zhongsen Carbon	
Zhejiang Yun He Tang Co., Ltd.	
Zhuxi Activated Carbon	
Zuoyun Bright Future Activated Carbon Plant	
Magnesium Metal[4] A–570–896	4/1/08–3/31/09
Tianjin Magnesium International Co., Ltd.	
Non-Malleable Cast Iron Pipe Fittings[5] A–570–875	4/1/08–3/31/09
NEP Tianjin Machinery Company	

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of certain activated carbon from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If the above named company does not qualify for a separate rate, all other exporters of magnesium metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If the above named company does not qualify for a separate rate, all other exporters of non-malleable cast iron pipe fittings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Countervailing Duty Proceeding

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–12571 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP55

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Marianas Advisory Panel (AP), Plan Team (PT), Commonwealth of the Northern Mariana Islands (CNMI) Archipelago Fishery Ecosystem Plan Regional Ecosystem Advisory Committee (REAC), and Guam REAC which may make recommendations on fishery management issues in the Western Pacific Region.

DATES: The Marianas Archipelago AP Meeting will be held on June 13, 2009, the Marianas Archipelago PT Meeting will be held on June 15, 2009, and the CNMI REAC will be held on June 16, 2009. All of these meetings will be held in Saipan, CNMI. The Guam REAC will be held on June 18, 2009 in Guam. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Marianas Archipelago AP, Marianas Archipelago PT and CNMI REAC will be held at the Fiesta Resort and Spa, Coral Reef Avenue, Saipan, CNMI; telephone: (670) 234–6412. The Guam REAC will be held at the Guam Hilton Resort and Spa, 202 Hilton Road, Tumon Bay, Guam; telephone: (671) 646–1835.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the AP, PT, and REACs may receive reports and make recommendations on emerging fishery issues in the Marianas Archipelago. Public comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for Marianas AP Meeting:

9:00 a.m.—5:00 p.m. Saturday, June 13, 2009

1. Welcome and Introductions of Members
2. Introduction to the Council and Magnuson Stevens Act
3. Status Report on 2008 Advisory Panel Recommendations
4. Emerging Fishery Issues
5. Synopsis of Upcoming 145th Council Meeting Actions
   A. Management Options for Pacific National Marine Monuments
      i. Non-commercial Fishing Definitions
      ii. Management Measures for Non-commercial Fishing
      iii. Management Measures for Commercial Fishing
   B. Report on Marianas Risk-ranking Exercise and Annual Catch Limits
6. Update on Fishery Management Actions
   A. CNMI Bottomfish Regulations and Compliance
   B. Update on Cooperative Research Process and Programs
7. Ecosystem Issues
   A. Military Activities in the Marianas Archipelago
      i. Process for Notification of Training Exercise Areas
      ii. Area Restrictions Around Military Instillations
      iii. Dredging and Dumping Activities
   B. Update on the Status of the Micronesian Challenge in CNMI
   C. Plans to Address Non-point Source Pollution
   D. Report on Longline Efforts in CNMI
8. Community Issues
   A. Report on Marianas Archipelago Lunar Calendar
   B. Guam Seasonal Fishing Exemptions
   C. CNMI Traditional Fishing Exemptions
   D. Report on the Marine Education and Training Program
   E. Report on the Community Development Plan and Community Demonstration Projects Program
9. Other Business
10. Public Comment
11. Discussion and Recommendations

Schedule and Agenda for Marianas Archipelago PT Meeting:

9:00 a.m.—5:00 p.m., Monday, June 15, 2009

1. Welcome and Introductions
2. Status of 2008 Marianas Archipelago PT Recommendations
3. Synopsis of Upcoming 145th Council Meeting Actions
   A. Management Options for Pacific National Marine Monuments

i. Non-commercial Fishing Definitions
ii. Management Measures for Non-commercial Fishing
iii. Management Measures for Commercial Fishing
B. Report on Marianas Risk-ranking Exercise and Annual Catch Limits
4. Bottomfish Management
A. Marianas Archipelago Annual Report Modules
i. Guam
ii. CNMI
B. Report on CNMI Bottomfish Regulations and Compliance
5. Coral Reef Ecosystem Management
A. Marianas Archipelago Annual Report Modules
i. Guam
ii. CNMI
B. Update on Council Coral Reef Conservation Projects
i. Report on CNMI Oceanographic Sensor Project
ii. Report on Guam Technical Assistant Project
iii. Report on Marianas Parrotfish Study
C. Update on the Status of the Micronesian Challenge in CNMI
6. Other Programs
A. Report on the Marine Education and Training Program
B. Update on Cooperative Research Process and Programs
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for CNMI REAC Meeting:

9:00 a.m.—5:00 p.m. Tuesday, June 16, 2009

1. Welcome and Introductions
2. Council and REAC Roles and Responsibilities
3. Status of 2008 CNMI REAC Recommendations
4. Management of the Marianas Trench Marine National Monument
A. Non-commercial Fishing Definitions
B. Management Measures for Fishing in the Monument
5. Community Marine Management Forum
A. Military Buildup-Marianas Training Range Complex: Fishing Safety and Effort at FDM
B. Non-point Source Pollution
i. Report on Pollution Issues in Rota
ii. Watershed Effects in CNMI
C. Report on Coral Reef Local Action Strategies
D. Update on Status of Micronesian Challenge in CNMI
Guest Speaker-Pelagic Fishing in the Mariana Archipelago: From the Pre-historic Period to the Present
6. Community Consultation Forum
A. Update on the Mariana Archipelago Lunar Calendar
B. Report on the Marine Education and Training Program
7. Update on Federal Fishery Management Actions
A. CNMI Bottomfish Regulations and Compliance
B. CNMI Longline Closure Areas
8. Other Business
9. Public Comment
10. Discussion and Recommendations

Schedule and Agenda for Guam REAC Meeting:

9:00 a.m.—5:00 p.m. Thursday, June 18, 2009

1. Welcome and Introductions
2. Council and REAC Roles and Responsibilities
3. Status of 2008 CNMI REAC Recommendations
4. Management of the Marianas Trench Marine National Monument
A. Non-commercial Fishing Definitions
B. Management Measures for Fishing in the Monument
5. Community Marine Management Forum
A. Military Buildup-Marianas Training Range Complex: Fishery Safety and Effort
B. Land Use Issues, Mitigation, and Habitat Restoration
6. Community Consultation Forum
A. Indigenous Fishing Rights: Access to Safe, Healthy Habitat for Sustainable Fishing
B. Traditional Fishing Exemption Process
C. Update on the Mariana Archipelago Lunar Calendar
Guest Speaker-Pelagic Fishing in the Mariana Archipelago: From the Pre-historic Period to the Present
7. Community Development Forum
A. Report on the Marine Education and Training Program
B. Local Capacity Building in Guam
C. Update on the Cooperative Research Process and Programs
8. Other Business
9. Public Comment
10. Discussion and Recommendations

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least five days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 26, 2009

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–12506 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting on Energy Issues in the Asia Pacific Economic Cooperation

AGENCY: International Trade Administration, Department of Commerce

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Commerce will host a two-hour meeting during which senior U.S. government officials will brief the business community on recent developments in the Asia Pacific Economic Cooperation (APEC) on energy issues, including the APEC Energy Working Group meeting in Santiago, Chile in April 20–24, 2009. The agenda will feature key outcomes from the Santiago meeting, U.S. objectives for APEC in 2009, including trade and investment priorities, and a discussion on industry engagement and advancing industry's priorities in APEC through effective public-private partnerships.

DATES: *Date of the event:* June 2, 2009, 10 a.m.–Noon; U.S. Department of Commerce, Room 4830.

ADDRESSES: To register for this meeting, please contact Man Cho, Office of Energy and Environmental Industries; Room 4053; U.S. Department of Commerce; 14th & Pennsylvania Avenue, NW.; Washington, DC 20230; 202–482–5159; *man.cho@mail.doc.gov*. The meeting will be held at the U.S. Department of Commerce, Room 4830.

FOR FURTHER INFORMATION CONTACT: Man Cho, Office of Energy and Environmental Industries; Room 4053; U.S. Department of Commerce; 14th & Pennsylvania Avenue, NW.; Washington, DC 20230; 202–482–5159; *man.cho@mail.doc.gov.*

SUPPLEMENTARY INFORMATION: If you are unable to make the meeting and would like further information on this topic, please see the Office of Energy and Environmental Industries Web site at *http://www.ita.doc.gov/td/energy* or contact us as indicated above.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the above contact when registering for this meeting.

Cheryl McQueen,

Acting Director, Office of Energy and Environmental Industries, U.S. Department of Commerce.

[FR Doc. E9–12632 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* June 29, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/27/2009 and 4/03/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (74 FR No. 58, pgs. 13413–13414 and 74 FR No. 63, pg. 15253) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

NSN: 7510–00–NIB–0897—Rubber Band, Sterling Grade, Size 33 1 lb.
NSN: 7510–01–058–9974—Rubber Band, Sterling Grade, Size 64 1 lb.
NSN: 7510–00–NIB–0898—Rubber Band, Sterling Grade, Size 117, 1 lb.
NSN: 7510–00–NIB–0899—Rubber Band, Sterling Grade, Size 19, 1 lb.
NSN: 7510–00–NIB–0900—Rubber Band, Sterling Grade, Size 32, 1 lb.
NSN: 7510–00–NIB–0901—Rubber Band, Sterling Grade, Size 16, 1 lb.
NSN: 7510–00–NIB–0902—Rubber Band, Sterling Grade, Size 18, 1 lb.
NSN: 7510–00–NIB–0903—Rubber Band, Sterling Grade, Size 54 Asst, 1 lb.
NSN: 7510–00–NIB–0904—Big Band Pack, Red.
NSN: 7530–00–NIB–0881—Folder, File, Reinforced (2-ply) Ltr Size Manila.
NSN: 7530–00–NIB–0883—Folder, File, Reinforced (2-ply) Ltr Size Manila.
Coverage: A-List for the total Government requirement as aggregated by the General Services Administration.
NSN: 7510–00–205–0371—Rubber Band, Sterling Grade, Size 84, 1/4lb.
NSN: 7510–00–205–0842—Rubber Band, Sterling Grade, Size 33, 1/4lb.
NSN: 7510–00–205–1438—Rubber Band, Sterling Grade, Size 19, 1/4lb.
NSN: 7510–00–205–1439—Rubber Band, Sterling Grade, Size 16, 1/4lb.
NSN: 7510–00–243–3434—Rubber Band, Sterling Grade, Size 32, 1/4lb.
NSN: 7510–00–243–3435—Rubber Band, Sterling Grade, Size 64, 1/4lb.
NSN: 7510–00–243–3437—Rubber Band, Sterling Grade, Size 18, 1/4lb.
NSN: 7530–00–NIB–0882—Folder, File, Reinforced (2-ply) Ltr Size Manila.
Coverage: B-List for the broad Government requirement as aggregated by the General Services Administration.
NPA: Central Association for the Blind & Visually Impaired, Utica, NY.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Service

Service Type/Location: Custodial Services, Allegheny National Forest, 4 Farm Colony Drive, Warren, PA.
NPA: Bollinger Enterprises, North Warren, PA.
Contracting Activity: Dept of Agriculture/Forest Service, Warren, PA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–12540 Filed 5–28–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: June 29, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and/or services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and/or services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and/or services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and/or services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and/or services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7520–00–NIB–1808—File, Wall Hanging, Clear.
NSN: 7520–00–NIB–1809—File, Wall Hanging, Smoke.
NSN: 7520–00–NIB–1810—File, Wall Hanging, Clear.
NSN: 7520–00–NIB–1811—File, Wall Hanging, Smoke.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, TX.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP Ctr.—Paper Products.
Coverage: A-list for the total Government requirement as aggregated by the General Services Administration.
Administration NSNs: 7520–00–NIB–1809, 7520–00–NIB–1810 and 7520–00–NIB–1811 and B-list.
NSN: 7520–00–NIB–1808 for the broad Government requirement as aggregated by the General Services Administration.
NSN: 7510–00–NIB–0862—Tape, Pressure Sensitive .75x1000 6 rolls per pack.
NSN: 7510–00–NIB–0863—Tape, Pressure Sensitive .75x1000 6 rolls per pack.
NSN: 7510–00–NIB–0864—Tape, Pressure Sensitive .75x1000 6 rolls per pack.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP Ctr.—Paper Products.
Coverage: A-list for the total Government requirement as aggregated by the General Services Administration.
NSN: 6230–01–514–0921—Kit, Safety, Lighting.
NSN: 6230–01–514–0920—Kit, Safety, Lighting.
NSN: 6230–01–513–2551—Kit, Safety, Lighting.
NSN: 6230–01–513–1934—Kit, Safety, Lighting.
NSN: 6230–01–513–1933—Kit, Safety, Lighting.
NSN: 6230–01–513–1930—Kit, Safety, Lighting.
NSN: 6230–01–513–1925—Kit, Safety, Lighting.
NSN: 6230–01–513–1924—Kit, Safety, Lighting.
NSN: 6230–01–513–1920—Kit, Safety, Lighting.
NPA: The Arc of Bergen and Passaic Counties, Inc., Hackensack, NJ.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia.
Coverage: C-list for the total requirement of the Defense Supply Center Philadelphia, Philadelphia.

Services

Service Type/Location: Food Service & Mess Attendants, Seabee Camp Covington Guam Support Facility, Resident NMCB, Santa Rita, GU.
NPA: Able Industries of the Pacific, Santa Rita, GU.
Contracting Activity: Dept. of the Navy, FISC Pearl Harbor.
Service Type/Location: Custodial Services, USDA–Forest Service–Midewin National Tallgrass Prairie, 30239 South State Route 53, Wilmington, IL.
NPA: United Cerebral Palsy of the Land of Lincoln, Springfield, IL.
Contracting Activity: Forest Service, Midewin National Tallgrass Prairie.
Service Type/Location: Grounds Maintenance Service, Grounds Maintenance, Caribbean National Forest, Rio Grand, PR, El Yunque, Rio Grand, PR.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: Forest Service, Southern Regional Office.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–12539 Filed 5–28–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Clarification of Scope of Procurement List Additions; 2009 Commodities Procurement List; Quarterly Update of the A-List and Movement of Products Between the A-List, B-List and C-List

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Publication of the quarterly update of the A-list and movement of products between the A-list, B-list and C-list as of July 1, 2009.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled, in accordance with the procedures published on December 1, 2006 (71 FR 69535–69538), has updated the scope of the Program's procurement preference requirements for the products listed below between and among the Committee's A-list, B-list and C-list. A-list products are suitable for the Total Government Requirement as aggregated by the General Services Administration, the B-list are those products suitable for the Broad Government Requirement as aggregated by the General Services Administration, and C-list products are suitable for the requirements of one or more specified agency(ies). The lists below track changes to A-, B-, C-designations that occurred between November 20, 2008 and February 10, 2009.

DATES: The effective date for the quarterly update of the A-list and movement of products between and among the A-list, B-list and C-list is July 1, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *cmtefedreg@jwod.gov.*

Products Moved From B-list to A-list

7930–01–555–3384 BioRenewables Conc. Glass Cleaner, Green Seal Cert.
7930–01–555–3382 BioRenewables RTU Graffiti Remover.
7920–01–572–7349 Broom, Lobby.
7930–01–555–2901 TriBase Multi Purpose Cleaner, Green Seal Cert.
7930–01–555–2898 BioRenewables RTU Glass Cleaner.
7930–01–555–2900 BioRenewables RTU Restroom Cleaner.

Products Moved From C-list to A-list

None.

Products Moved From A-list to B-list

None.

Products Moved From A-list to C-list

None.

Products Moved From B-list to C-list

None.

Products Moved From C-list to B-list

None.

The complete A-list is available at *http://www.jwod.gov/jwod/p_and_s/alist2007.htm.*

Barry S. Lineback,

Director, Program Operations.

[FR Doc. E9–12541 Filed 5–28–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting; cancellation.

SUMMARY: On Monday, March 16, 2009 (74 FR 11090–11091) the Department of Defense announced closed meetings of the Defense Science Board (DSB) Spring Quarterly. On Friday, May 8, 2009 (74 FR 21664) the Department of Defense announced that these meetings were rescheduled to June 3–4, 2009. This notice announces that the Defense Science Board Spring Quarterly meetings have been cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil,* or via phone at (703) 571–0084.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–12504 Filed 5–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice of meeting

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force) will take place:

DATES: Thursday, June 25, and Friday, June 26, 2009, 8 a.m. to 4:30 p.m. Central European Summer Time (hereafter referred to as CEST).

ADDRESSES: Naval Support Activity Naples, Italy.

FOR FURTHER INFORMATION CONTACT: Michael Molnar, Deputy to the Executive Director; 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; phone (888) 325–6640; fax (703) 325–6710; *michael.molnar@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to obtain and discuss information on the Task Force's congressionally mandated task to examine matters related to sexual assault in the Military Services through briefings from, and discussion with, Task Force staff, subject-matter experts, victim testimonials, and comments from the general public including Service Members.

Agenda

Thursday, June 25, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–8:45 a.m. Plan of the Day.
8:45 a.m.–9 a.m. Break.
9 a.m.–12 p.m. Subcommittee Work.
12 p.m.–1 p.m. Noon Meal.
1 p.m.–1:20 p.m. Cross Check between Subcommittees.
1:20 p.m.–1:30 p.m. Break.
1:30 p.m.–4:10 p.m. Subcommittee Work.
4:10 p.m.–4:30 p.m. Wrap Up.

Friday, June 26, 2009

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.
8:05 a.m.–8:10 a.m. Opening Remarks.
8:10 a.m.–9:10 a.m. Quick Compass Brief.
9:10 a.m.–9:20 a.m. Break.
9:20 a.m.–10:20 a.m. Drill Sergeant and Instructor Brief.
10:20 a.m.–10:30 a.m. Break.
10:30 a.m.–11:30 a.m. Public Comment Period.
11:30 a.m.–12:30 p.m. Noon Meal.
12:30 p.m.–2 p.m. Subcommittee Updates.
2 p.m.–2:15 p.m. Break.
2:15 p.m.–4:15 p.m. Member Discussion on Report Content.
4:15 p.m.–4:30 p.m. Wrap Up.

The public can view meeting updates at www.dtic.mil/dtfsams.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Designated Federal Officer: Colonel Cora M. Jackson-Chandler; 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; phone (888) 325–6640; fax (703) 325–6710; *cora.chandler@wso.whs.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a) (3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Task Force on Sexual Assault in the Military Services about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Task Force on Sexual Assault in the Military Services.

All written statements shall be submitted to the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is provided in this notice or can be obtained from the GSA's FACA Database: *https://www.fido.gov/facadatabase/public.asp.*

Written statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the listed address above no later than 5 p.m., Eastern Daylight Time (hereafter referred to as EDT), Wednesday, June 17, 2009. Written statements received after this date may not be provided to, or considered by, the Defense Task Force on Sexual Assault in the Military Services until its next meeting.

The Designated Federal Officer will review all timely submissions with the Defense Task Force on Sexual Assault in the Military Services Co-Chairs and ensure they are provided to all members of the Defense Task Force on Sexual Assault in the Military Services before the meeting that is the subject of this notice.

Oral Statements by the Public to the Membership: Members of the public may make an oral presentation to the committee and must notify the Designated Federal Officer no later than 5 p.m. EDT, Wednesday, June 17, 2009. Oral presentations by members of the public will be permitted only on June 26, 2009, from 10:30 a.m. to 11:30 a.m. before the Task Force. Presentations will be limited to ten (10) minutes each. The number of oral presentations to be made will depend on the number of requests received from members of the public and the time allotted. Each person who desires to make an oral presentation must provide the Designated Federal

Officer for the Defense Task Force on Sexual Assault in the Military Services with one (1) written copy of the presentation by 5 p.m. EDT, Wednesday, June 17, 2009, and bring 15 written copies of any material that is intended for distribution at the meeting.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–12503 Filed 5–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0073]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between the Department of Veterans Affairs (VA) and DoD that their records are being matched by computer. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

DATES: This proposed action will become effective June 29, 2009, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel P. Jenkins at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the VA to identify ineligible VA disability compensation recipients who have returned to active duty. This matching agreement will identify those veterans who have returned to active duty, but are still receiving disability compensation. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on May 20, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435).

Dated: May 26, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Verification of Disability Compensation

A. *Participating Agencies:* Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate. VA will provide identifying information on disability compensation recipients to DMDC to match against a file of active duty (including full-time National Guard and Reserve) personnel. The purpose is to identify those recipients who have returned to active duty and are ineligible to receive VA compensation so that benefits can be adjusted or terminated, if in order.

C. *Authority for Conducting the Match:* The legal authority for conducting the matching program for use in the administration of VA's Compensation and Pension Benefits Program is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide, pursuant to 38 U.S.C. 5106, such information as requested by VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information with respect thereto.

D. *Records To Be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

VA will use the system of records identified as ''VA Compensation, Pension and Education and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28),'' first published at 41 FR 9294, March 3, 1976, and last amended at 74 FR 14685, April 1, 2009, with other amendments, as cited therein. Attachment 4 is a copy of the system notice with the appropriate routine use, i.e., RU 39, annotated.

DoD will use the system of records identified as DMDC 01, entitled, ''Defense Manpower Data Center Data Base,'' last published at 73 FR 5820, January 31, 2008. Attachment 5 is a copy of the system notice with the

appropriate routine use, i.e., RU 1(e)(1), annotated.

E. *Description of Computer Matching Program:* The Veterans Benefits Administration will provide DMDC with an electronic file which contains specified data elements of individual VA disability compensation recipients. Upon receipt of the electronic file, DMDC will perform a computer match using all nine digits of the SSNs in the VA file against a DMDC computer database. The DMDC database consists of personnel records of active duty (including full-time National Guard and Reserve) military members. Matching records, ''hits'' based on the SSN, will produce the member's name, branch of service, and unit designation, and other pertinent data elements. The hits will be furnished to the Veterans Benefits Administration which is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the source file and for resolving any discrepancies or inconsistencies on an individual basis. The Veterans Benefits Administration will also be responsible for making final determinations as to positive identification, eligibility for benefits, and verifying any other information with respect thereto.

The electronic file provided by VA will contain information on approximately 3.2 million disability compensation recipients.

The DMDC computer database file contains approximately 1 million records of active duty military members, including full-time National Guard and Reserve.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. E9–12554 Filed 5–28–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0071]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This Action will be effective without further notice on June 29, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249–0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (720) 242–6631.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 20, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated December 12, 2000, 65 FR 239.

Dated: May 20, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5500c

SYSTEM NAME:

Law Office Management System

SYSTEM LOCATION:

Defense Finance and Accounting Service (DFAS), Office of General Counsel, Indianapolis, 8899 E. 56th Street, Indianapolis, IN 46249–0160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty, Reserve, Guard, retired, separated military members including their dependents, spouses, ex-spouses, annuitants, legal guardians, current, retired or separated DoD civilian employees, non-DoD civilian employees paid by DFAS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), or other personal identifier, home address, home or office telephone numbers, pay and personnel information, dependent or annuitant information, marital status, birth date, employment information, personal e-mail addresses, business e-mail addresses, tax information, personal letters, memorandums, legal opinions, pleading, and miscellaneous documents related to judicial or administrative proceedings or benefit/pay inquiries, and all other information necessary to provide advice and assistance to personnel seeking legal assistance.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C 301, Departmental Regulations, Department of Defense Directive (DoDD) 5145.01, General Counsel of the Department of Defense, and E.O. 9397 (SSN).

PURPOSE(S):

The system will be used as a repository for opinions issued and researched by the Office of General Counsel. In addition, it will facilitate the recording, processing, management, and tracking of all requests for legal assistance related to personnel, military and civilian pay, and commercial pay issues. The system will also maintain a record of the Office of General Counsel replies to each request or inquiry.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the DFAS compilation of system of records notices apply to this system of records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

STORAGE:

Electronic storage media and paper records in file folders.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in a building protected by guards, with controlled screening, use of visitor registers, electronic access, and/or locks. Access is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their duties. User IDs and passwords are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when actions are completed, superseded, obsolete, or no longer needed. Other records will be destroyed 6 years and 3 months after the case has closed. Records are destroyed by degaussing, burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Office of General Counsel, General Counsel, 8899 East 56th Street, Indianapolis, Indiana 46249–0160.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

INDIVIDUALS SHOULD FURNISH FULL NAME, SOCIAL SECURITY NUMBER (SSN), CURRENT ADDRESS, AND TELEPHONE NUMBER.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

The individual, DoD Components, such as the Army, Navy, Air Force and Marine Corps; Federal, State or Local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–12502 Filed 5–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Department of Defense Audit Advisory Committee (hereafter referred to as the Committee).

The Committee shall provide the Secretary of Defense, through the Under Secretary of Defense (Comptroller)/Chief Financial Officer, independent advice on DoD financial management, including the financial reporting process, systems of internal controls, audit processes and processes for monitoring compliance with applicable laws and regulations. In accordance with DoD policy and procedures, the Under Secretary of Defense (Comptroller)/Chief Financial Officer is authorized to act upon the advice emanating from this advisory committee.

The Committee shall be comprised of no more than seven members who are distinguished members of the audit, accounting and financial communities. Committee members appointed by the Secretary of Defense, who are not full-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as Special Government Employees.

The Committee, in keeping with DoD policy will make every effort to achieve a balanced membership, including a cross section of experts directly affected, interested and qualified to advice on financial and audit matters. Committee members shall be appointed on an annual basis by the Secretary of Defense, and with the exception of travel and per diem for official travel, shall serve without compensation. The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall select the committee's chairperson from the committee's membership at large.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION:

The Committee shall meet at the call of the committee's Designated Federal Officer, in consultation with the Chairperson, and the estimated number of committee meetings is four per year. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

The Committee shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Department of Defense or any federal officers or employees who are not members of the Committee.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Committee membership about the Committee's

mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Committee.

All written statements shall be submitted to the Designated Federal Officer for the Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Audit Advisory Committee's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 20, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–12500 Filed 5–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplement No. 2 to the Final Environmental Impact Statement for the West Tennessee Tributaries (WTT) General Reevaluation

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The draft supplement no. 2 will be prepared in conjunction with a general reevaluation report (GRR) and will supplement the ''Final Supplement to the Final Environmental Impact Statement, West Tennessee Tributaries Project (Obion-Forked Deer River Basin),'' filed with the Environmental Protection Agency on February 25, 1983. A general reevaluation study will be conducted for the entire WTT project area to determine if there is still a federal interest in pursuing a flood risk management project and, if so, recommend a plan of improvement. The GRR and draft supplement no. 2 to the final environmental impact statement (FEIS) will focus on methods that reduce flood risks within the Obion and Forked Deer watersheds by restoring natural floodplain functions and reducing sedimentation that could cause channel blockages.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thron, telephone (901) 544–0708, CEMVM–PM–E, 167 N. Main, Room B–202, Memphis, TN 38103, e-mail—*john.m.thron@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action: The project study consists of determining flood risk management solutions in the Obion and Forked Deer watersheds in west Tennessee. The project is authorized by Section 203 of the Flood Control Act of June 30, 1948 (Pub. L. 80–858, 62 Stat. 1171, 1175, 1178), and amended and modified by Section 207 of the Rivers and Harbors Act of November 7, 1966 (Pub. L. 89–789, 80 Stat. 1405), and further amended by Section 3 of the Water Resources Development Act of March 7, 1974 (Pub. L. 93–251, 88 Stat. 12, 14) and Section 183 of the Water Resources Development Act of October 22, 1976 (Pub. L. 94–587, 90 Stat. 2917). Construction began in 1961. The initial project environmental impact statement (EIS) was filed with the Council on Environmental Quality (CEQ) on February 3, 1971. The federal court determined in 1973 that the 1971 EIS prepared by the Corps did not meet National Environmental Policy Act (NEPA) standards and enjoined the Corps from further construction on March 2, 1973. The Corps filed a revised EIS with CEQ on July 21, 1975, entitled, ''Final Environmental Impact Statement West Tennessee Tributaries Project;'' however, the federal court in its decision of January 27, 1978 again determined that the FEIS was not sufficient to meet NEPA standards and directed that it be supplemented. A final supplement to the FEIS was filed with the Environmental Protection Agency on February 25, 1983 (Record of Decision signed August 8, 1983), entitled, ''Final Supplement to the Final Environmental Impact Statement, West Tennessee Tributaries Project.'' The final supplement to the FEIS included the addition of certain soil erosion control and timber, fish, and wildlife conservation features to the flood control plan. Construction resumed in 1985 after the issuance of a consent order (Civil Action Number C–70–349) stating the Corps was allowed to proceed provided they follow a protocol in the acquisition of the 32,000 acres of mitigation lands authorized by Section 3 of the Water Resources Development Act of 1974 (Pub. L. 93–251, 88 Stat. 12, 14). However, in June of 1987, the State of Tennessee denied water quality certification for the next item of work and construction was again suspended. All attempts to resolve the denial were unproductive. By April of 1990, the Corps had acquired 13,527 acres of mitigation lands for the project. Several demonstration projects were pursued between 1992 and 2008. Most notably, a limited reevaluation was performed in 1996 for a demonstration project in the Middle Fork Forked Deer River and a demonstration project in the Stokes Creek watershed. However, the costs of compliance with the consent order were too great to pursue the demonstration projects. By letter dated December 23, 2008, the State of Tennessee requested that a general reevaluation study be conducted for the entire project area to determine if there is still a federal interest in pursuing a flood risk management project and, if so, recommend a plan of improvement.

2. Reasonable Alternatives: A wide range of alternatives will be examined for the study. Alternatives will focus on methods that control sediment entering the Obion and Forked Deer watersheds, restore natural floodplain functions, and comply with the consent order while achieving the authorized project purpose of flood risk management. Comparisons will be made among the alternative plans, including the ''no action'' alternative.

3. The Scoping Process: The purpose of this notice is to advise all interested parties of the intent to supplement the ''Final Supplement to the Final Environmental Impact Statement, West Tennessee Tributaries Project (Obion-Forked Deer River Basin)'' and to solicit comments and information concerning the study. A public involvement program has been initiated and will be maintained throughout the study to solicit input from individuals and interested parties and to identify any concerns or significant issues related to the project. This notice is being circulated to federal, state, and local environmental resource and regulatory agencies; Indian Tribes; non-governmental organizations; and the general public. All interested parties are encouraged to participate in the scoping process. A public scoping meeting will be held on June 23, 2009, 7 p.m., at the Temple Baptist Church, 9105 East Van Hook, Milan, Tennessee. It is anticipated that the draft supplement no. 2 to the FEIS will be available for public review during the fall of 2014. A public meeting will be held during the review period to receive comments and address questions concerning the draft report.

Dated: May 22, 2009.

Thomas P. Smith,

Colonel, Corps of Engineers, District Engineer, Memphis District.

[FR Doc. E9–12567 Filed 5–28–09; 8:45 am]

BILLING CODE 3710–KS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0072]

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/ Central Security Service, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The National Security Agency/Central Security Service is proposing to alter an exempt system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on June 29, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 21, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 21, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 10

SYSTEM NAME:

NSA/CSS Personnel Security File (February 22, 1993, 58 FR 10531).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records relevant to access classified information, assignment and reassignment, foreign official and unofficial travel, access to NSA/CSS spaces or facilities, access to NSA's Intranet, and other personnel actions where security represents a relevant and valid element of the determination. Records may consist of name, Social Security Number (SSN), home address, home phone number, security file number, statement of personal history, photograph, fingerprint data, agreements with respect to specific security processing procedures, security processing forms and records, investigative and polygraph reports, appeal records, incident and complaint reports, unsolicited information when relevant, reports by domestic law enforcement agencies when relevant, clearance data, access authorization, foreign travel data, security secrecy agreements and financial data''.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Delete entry and replace with ''50 U.S.C. Sections 831–835, Personnel Security Procedures in the National Security Agency; E.O.10450, as amended, Security Requirements for Government Employment; E.O.10865, as amended, Safeguarding Classified Information Within Industry, E.O.12968, Access to Classified Information; and E.O 9397 (SSN)''.

PURPOSE(S):

Delete entry and replace with ''The records are used for the purpose of determining suitability, eligibility, or qualification for civil employment, federal contracts, or access to classified information and/or NSA/CSS spaces and facilities; to determine access to NSA's Intranet, to determine and ensure continued eligibility for access to classified information; to record adjudicative actions and determinations; to record processing steps taken; to document due process actions taken; to make determinations on official and unofficial foreign travel; to make determinations on assignment and reassignment and other actions where security represents a relevant and valid element of the determination''.

ROUTINE USE OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To agencies outside DoD, to include but not limited to other clearance holder agencies or agencies charged with making clearance determinations, government agencies involved with national security or clearance investigations, other government agencies and private contractors requiring clearance status information and authorized to receive same; the Director National Intelligence (DNI) and his General Counsel in the event of litigation or anticipated litigation with respect to unauthorized disclosures of classified intelligence or intelligence sources and methods and related court actions; judicial branch elements pursuant to specific court orders or litigation.

In addition, other government agencies or private contractors may be informed of information developed by NSA which bears on assignee's or affiliate's status at NSA with regard to security considerations.

To local law enforcement (county and state) and other federal, state, or local agencies or departments for hiring purposes.

To any entity or individual under contract with NSA/CSS for the purpose of providing security-related services.

To any party, council, representative, and/or witness in any legal proceeding, where pertinent, to which DoD is a party before a court or administrative body (including, but not limited to, the Equal Employment Opportunity Commission and Merit System Protection Board).

The DoD 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system''.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper in file folders and electronic storage media''.

RETRIEVABILITY:

Delete entry and replace with ''By name, Social Security Number (SSN), or unique Security File Number''.

SAFEGUARDS:

Delete entry and replace with ''Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection''.

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records containing no derogatory information are reviewed for retention 10 years after date of last action then destroyed; records containing derogatory information are reviewed for retention 25 years after last action then destroyed.

Records are destroyed by pulping, burning, shredding, or erasure or destruction of magnet media''.

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''The Associate Director for Security and Counterintelligence, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000''.

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address''.

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address''.

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248''.

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Data provided by individual during employment and security processing; data provided by investigative service processing individual's background; data provided by references, educational institutions and other sources named by individual or developed during background investigation; unsolicited data from any source where relevant; data provided by the Office of Personnel Management and other agencies, departments, and governmental elements involved in the conduct of National Agency checks and Local Agency checks; the Federal Bureau of Investigation; data developed by appropriate governmental elements in the course of a national security investigation or investigation into alleged violations of criminal statutes related to unauthorized disclosure of intelligence or protection of intelligence sources and methods; documents furnished by agency element sponsoring individual for access to specific classified information''.

* * * * *

GNSA 10

SYSTEM NAME:

NSA/CSS Personnel Security File.

SYSTEM LOCATION:

National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with NSA/CSS; civilian employees; personnel under contract; military assignees; members of advisory groups; consultants; experts; other military personnel; federal employees; employees of contractors, and employees of services; other individuals who require access to NSA/CSS facilities or information and individuals who were formerly affiliated with NSA/CSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relevant to access classified information, assignment and reassignment, foreign official and unofficial travel, access to NSA/CSS spaces or facilities, access to NSA's Intranet, and other personnel actions where security represents a relevant and valid element of the determination. Records may consist of name, social security number, home address, home phone number, security file number, statement of personal history, photograph, fingerprint data, agreements with respect to specific security processing procedures, security processing forms and records, investigative and polygraph reports, appeal records, incident and complaint reports, unsolicited information when relevant, reports by domestic law enforcement agencies when relevant, clearance data, access authorization, foreign travel data, security secrecy agreements, and financial data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. Sections 831–835, Personnel Security Procedures in the National Security Agency; E.O.10450, as amended, Security Requirements for Government Employment; E.O.10865, as amended, Safeguarding Classified Information Within Industry, E.O.12968, Access to Classified Information; and E.O 9397 (SSN).

PURPOSE(S):

The records are used for the purpose of determining suitability, eligibility, or qualification for civil employment, federal contracts, or access to classified information and/or NSA/CSS spaces and facilities; to determine access to NSA's Intranet, to determine and ensure continued eligibility for access to classified information; to record adjudicative actions and determinations; to record processing steps taken; to document due process actions taken; to make determinations on official and unofficial foreign travel; to make determinations on assignment and reassignment and other actions where security represents a relevant and valid element of the determination.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To agencies outside DoD, to include but not limited to other clearance holder agencies or agencies charged with making clearance determinations, government agencies involved with national security or clearance investigations, other government agencies and private contractors

requiring clearance status information and authorized to receive same; the Director National Intelligence and his General Counsel in the event of litigation or anticipated litigation with respect to unauthorized disclosures of classified intelligence or intelligence sources and methods and related court actions; judicial branch elements pursuant to specific court orders or litigation.

In addition, other government agencies or private contractors may be informed of information developed by NSA which bears on assignee's or affiliate's status at NSA with regard to security considerations.

To local law enforcement (county and state) and other federal, state, or local agencies or departments for hiring purposes.

To any entity or individual under contract with NSA/CSS for the purpose of providing security-related services.

To any party, council, representative, and/or witness in any legal proceeding, where pertinent, to which DoD is a party before a court or administrative body (including, but not limited to, the Equal Employment Opportunity Commission and Merit System Protection Board).

The DoD 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name, Social Security Number (SNN), or unique Security File number.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection.

RETENTION AND DISPOSAL:

Records containing no derogatory information are reviewed for retention 10 years after date of last action then destroyed; records containing derogatory information are reviewed for retention 25 years after last action then destroyed.

Records are destroyed by pulping, burning, shredding, or erasure or destruction of magnet media.

SYSTEM MANAGER(S) AND ADDRESS:

The Associate Director for Security and Counterintelligence, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the, National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/ Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Data provided by individual during employment and security processing; data provided by investigative service processing individual's background; data provided by references, educational institutions and other sources named by individual or developed during background investigation; unsolicited data from any source where relevant; data provided by the Office of Personnel Management and other agencies, departments, and governmental elements involved in the conduct of National Agency checks and Local Agency checks; the Federal Bureau of Investigation; data developed by appropriate governmental elements in the course of a national security investigation or investigation into alleged violations of criminal statutes related to unauthorized disclosure of intelligence or protection of intelligence sources and methods; documents furnished by agency element sponsoring individual for access to specific classified information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C. 552a (k)(2), (k)(5), and (k)(6), as applicable.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E9–12501 Filed 5–28–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–447–002]

Monroe Gas Storage Company, LLC; Notice of Supplement to Tariff Compliance Filing

May 21, 2009.

Take notice that on May 18, 2009, Monroe Gas Storage Company, LLC (Monroe) filed a supplement to its tariff compliance filing submitted on May 4, 2009 in accordance with the Federal Energy Regulatory Commission's Order Accepting and Suspending Tariff Sheets Subject to Refund and Further Review issued on April 14, 2009. In this filing, Monroe submitted substitute tariff sheets that supplement the electronic media of its FERC Gas Tariff, Original Volume No. 1, previously submitted on May 4, 2009 in Docket No. RP09–447–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12438 Filed 5–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1127–000]

Wheelabrator South Broward Inc.; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 21, 2009.

This is a supplemental notice in the above-referenced proceeding of Wheelabrator South Broward Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 10, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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. E9–12439 Filed 5–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1118–000]

SESCO CALISO, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 21, 2009.

This is a supplemental notice in the above-referenced proceeding of SESCO CALISO, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is June 10, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12440 Filed 5–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Jim Woodruff Project

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of extension of time for written comments.

SUMMARY: The period for submitting written comments on Southeastern's proposed rate adjustment is extended to June 26, 2009.

DATES: Written comments may be submitted until the close of business June 26, 2009.

ADDRESSES: Written comments should be submitted to: Kenneth E. Legg, Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing Division, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711. (706) 213–3800.

SUPPLEMENTARY INFORMATION: On March 11, 2009, Southeastern published a Notice in the **Federal Register** (74 FR 10570) that proposed new rate schedules to replace the current wholesale power schedules for the Jim Woodruff Project for a 5-year period from September 20, 2009 to September 19, 2014. The Notice outlined a public comment process that included a public information and comment forum for the Jim Woodruff customers and interested parties, which was held in Tallahassee, FL, on April 23, 2009. The public information process also provided that additional written comments would be due to Southeastern on or before June 9, 2009. On May 19, 2009, the Jim Woodruff customers, through their representatives, requested an extension of the comment period from June 9, 2009 to close of business on June 26, 2009. The additional time is needed in order for the customers to review extensive materials and information provided and developed at and after the forum and to allow sufficient time for such necessary review and preparation of informed comments regarding the new proposed rates. Southeastern is granting the customers' request for an extension of time.

Dated: May 20, 2009.

Kenneth E. Legg,

Administrator.

[FR Doc. E9–12488 Filed 5–28–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–7–000]

Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations; Order Clarifying Requirement To Notify Commission of Material Changes in Facts and Allowing 45-Day Filing Period for Notifications

Issued May 21, 2009.

Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller

1. In Order No. 889,[1] the Commission directed all public utilities that own, control or operate facilities for transmitting energy in interstate commerce to provide certain types of information regarding their transmission operations on an Open Access Same-time Information System (OASIS). The Commission also established Standards of Conduct requiring that personnel engaged in transmission system operations function independently from personnel engaged in marketing functions. In Order No. 889, the Commission stated that it would entertain requests for waiver of these requirements on a case-by-case basis, and, on a case-by-case basis has granted waivers for certain public utilities.[2] The Commission subsequently revised the Standards of Conduct in various proceedings, most recently in Order No. 717, but affirmed that public utilities may request a waiver of those requirements.[3] In Order No. 717, the Commission found that any entity that has previously received a full or partial waiver of prior versions of the Standards of Conduct may continue to rely on that waiver.

2. It has come to the Commission's attention that some utilities may continue to rely on these waivers even after they no longer qualify for them. The purpose of this order is to clarify that such reliance is inappropriate if there is a material change in the underlying facts on which the waiver was granted, and that the Commission must be notified when such a change occurs.

Background

3. In Order No. 889, the Commission acknowledged that it might be burdensome for certain small utilities to comply with the rules therein, and stated that utilities may seek a waiver of some or all of the requirements.[4] In subsequent orders outside of that rulemaking proceeding, the Commission established criteria for granting requests for waiver. The Commission held that waiver of Order No. 889 would be appropriate for a public utility if it: (1) Owns, operates, or controls only limited and discrete facilities; or (2) qualifies as a small public utility, unless it is a member of a tight power pool, or there are other circumstances that indicate a waiver is not justified.[5] To qualify as a small public utility, an applicant ''must be a public utility that meets the Small Business Administration (SBA)

[1] *Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g,* Order No. 889–A, FERC Stats & Regs. ¶ 31,049, *reh'g denied,* Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[2] *See, e.g., Black Creek Hydro, Inc.,* 77 FERC ¶ 61,232 (1996) (*Black Creek*).

[3] *See Standards of Conduct for Transmission Providers,* Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31, 280, at P 33 (2008), *reh'g pending.* The Standards of Conduct are currently codified in Part 358 of the Commission's regulations.

[4] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,594.

[5] *Black Creek,* 77 FERC at 61,941; *Central Minnesota Municipal Power Agency,* 79 FERC ¶ 61,260, at 62,126–27 (1997) (*Central Minnesota*). *See also* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 23.

definition of a small electric utility, i.e., disposes of no more that 4 million MWh annually.''[6] In determining the amount of electricity a public utility ''disposes of,'' the Commission has considered the annual sales of the public utility in megawatt hours.[7]

4. The Commission articulated similar criteria for evaluating requests for waiver of open access requirements adopted in Order No. 888.[8] In orders granting waivers of Order No. 889, the Commission has not explicitly stated what would happen if the facts upon which the Commission relied when granting the waiver changed. Orders granting waiver of Order No. 889 or Standards of Conduct requirements generally have been silent on any obligation for the public utility to notify the Commission of material changes in fact that might affect the waiver.[9] Instead, those orders provide that such waivers remain effective until the Commission takes action in response to a complaint alleging inadequate access to transmission information or use of transmission information to unfairly benefit a utility's sales, even if material changes have occurred.[10]

Guidance

5. In order to ensure that public utilities continue to qualify for a waiver of the requirements of Order No. 889 or the Standards of Conduct, the Commission will require any public utility that has received a waiver of Order No. 889 or the Standards of Conduct to notify the Commission if there has been a material change in facts that may affect the public utility's waiver. A material change would include that the utility no longer meets the sales threshold applied to determine eligibility for the waiver[11] or if the facilities owned, operated, or controlled by the public utility are no longer ''limited and discrete.'' Upon receipt of the notice of the change of facts, the Commission may reevaluate continued eligibility for the waiver. Utilities that are granted a waiver have 30 days from the date of the change to submit a notification. A previously granted waiver will remain in effect until the Commission acts on such filing.

6. We recognize that the Commission has not previously required utilities with waivers to notify the Commission of material changes in fact that may affect the waiver. Accordingly, we will allow all public utilities that previously have been granted a waiver 45 days from the date of publication of this order in the **Federal Register** to notify the Commission of any change in material facts upon which the Commission relied in granting a waiver of the requirements of Order No. 889 and the Standards of Conduct.

The Commission orders:

(A) Any public utility that has received a waiver of Order No. 889 or the Standards of Conduct is hereby directed to notify the Commission if there has been a material change in facts that may affect the waiver, within 30 days of the date of the change, as discussed in the body of this order.

(B) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12437 Filed 5–28–09; 8:45 am]

BILLING CODE 6717–01–P

[6] *Black Creek,* 77 FERC at 61,941.

[7] The Commission, for example, identified the number of small public utilities that would be affected by open access and OASIS reforms by reference to sales data reported in FERC Form No. 1. *See* Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,628. In Order No. 717, the Commission clarified that public utilities that have received a full or partial waiver of the Standards of Conduct could continue to rely on those waivers to the extent the reforms adopted therein did not render such waivers moot. *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 33.

[8] See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,853–54 (1996), order on reh'g, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002). In Order No. 888, the Commission noted that the disposition of 4 million MWh a year translated, at the time, into sales in the range of $120–180 million/year and noted that the SBA defines a small electric utility as one that disposes of 4 million MWh per year. Order No. 888, FERC Stats. & Regs. ¶31,036 at 31,897 and n.1072.

[9] *See, e.g., Alcoa Power Generating, Inc.,* 108 FERC ¶ 61,243 (2004); *Salmon River Electric Cooperative, Inc.,* 107 FERC ¶ 61,132 (2004); *FPL Energy Oliver Wind, LLC,* 123 FERC ¶ 61,246 (2008); *but see Wabash Valley Power Ass'n,* 123 FERC ¶ 61,193, at P 11 (2008) (directing applicant to notify the Commission if material circumstances change that affect its continued qualification for waiver); *Perryville Energy Partners, L.L.C.,* 118 FERC ¶ 61,140, at P 8 (2007) (directing notification if material circumstances change); *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, FERC Stats. & Regs. ¶ 31,216, at P 115 (2006), *reh'g denied,* Order No. 676–A, 116 FERC ¶ 61,255 (2006), *amended,* Order No. 676–B, FERC Stats. & Regs. ¶ 31,246 (2007), *revised,* Order No. 676–C, 73 Fed. Reg. 43,848 (July 29, 2008), FERC Stats. & Regs. ¶ 31,274 (2008), *order on clarification and reh'g,* Order No. 676–D, 124 FERC ¶ 61,317 (2008) (extending to small entities that previously were granted waiver of Order Nos. 888 and 889 waivers of the OASIS requirements adopted in the Rule, with the condition that if material circumstances change that affect continued qualification they must report it to the Commission).

[10] In contrast, for waivers of Order No. 888, the Commission has required each utility receiving a waiver to file an Open Access Transmission Tariff (OATT) within 60 days of receiving a request for transmission service on its transmission system. *See, e.g., Central Minnesota,* 79 FERC at 62,126–27.

[11] As discussed in *Wolverine Power Supply Cooperative, Inc.,* to be issued concurrently with this order, the Commission retains the existing threshold for defining a small public utility. *Wolverine Power Supply Cooperative, Inc.,* 127 FERC ¶ 61,159 (2009).

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: TRM–12S]

2012 Tiered Rate Methodology Supplemental Proceeding; Public Hearings and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of proposed modifications to the Tiered Rate Methodology.

SUMMARY: BPA is proposing modifications to its Tiered Rate Methodology (TRM), TRM–12–A–02, which specifies the methodology to be used in setting BPA's Priority Firm Power (PF) rates beginning with the FY 2012–2013 rate period and continuing through the life of the Regional Dialogue Contracts. The TRM was established on November 10, 2008, by the Administrator's Record of Decision (ROD), TRM–12–A–01, following a procedural hearing held pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C., section 839e(i). The TRM contains specified procedures that govern its modification. The modifications proposed here are made in accordance with the provisions in section 12 of the TRM, which include changes to the TRM that were identified and agreed to between BPA and preference customer representatives designated by the Public Power Council prior to February 1, 2009.

One of those modifications would substantively change the calculation of Contract High Water Marks (CHWM) under the TRM. Another proposed modification changes one public utility customer's existing resource amount shown in Attachment C to the TRM. The remaining proposed modifications are offered to clarify the TRM language in specific places.

Determinations of specific rate levels applicable to sales under the Regional

Dialogue Contracts will not be made in this proceeding. Rather, the specific rate levels will be developed consistent with the TRM in the respective Northwest Power Act section 7(i) rate proceedings.

BPA is reopening the TRM proceeding pursuant to section 7 of the Northwest Power Act to consider the proposed TRM modifications. Entities that were parties to TRM–12 do not need to intervene again in this reopened proceeding. Other entities wishing to become a formal party to the proceeding must file a petition to intervene, notifying BPA in writing of their intention to do so in conformance with the requirements stated in this Notice.

DATES: Petitions to intervene must be received no later than 5 p.m., Pacific Daylight Time (PDT), on June 2, 2009. Proposed hearing dates are supplied in **SUPPLEMENTARY INFORMATION**, Part I.A. below. Non-party participants may make written comments between May 28, 2009, and July 8, 2009. Comments must be received by 5 p.m., PDT, on July 8, 2009, in order to be considered in the Administrator's ROD.

ADDRESSES: Petitions to intervene should be directed to Ericka Doot, Hearing Clerk, LP–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232 or by e-mail to: *trm12rate@bpa.gov,* and must be received no later than 5 p.m., PDT, on June 2, 2009. In addition, a copy of the petition must be served concurrently on BPA's General Counsel directed to Peter J. Burger, LP–7, Office of General Counsel, Bonneville Power Administration, 905 NE. 11th Avenue, Portland, OR 97232 or by e-mail to: *pjburger@bpa.gov.* (*See* Part III (A) for more information.) Written comments can be submitted online at BPA's Web site *http://www.bpa.gov/comment,* or by mail to: BPA Public Affairs, DKE–7, P.O. Box 14428, Portland, OR 97293–4428. Please identify written or electronic comments as ''TRM–12S Proceeding'' comments. Documents will be available for public viewing after June 4, 2009. The documents are available at: *http://www.bpa.gov/corporate/ratecase,* or at BPA's Public Information Center, BPA Headquarters Building, 1st Floor; 905 NE. 11th, Portland, Oregon. The prehearing conference will be held on June 4, 2009, beginning at 1:30 p.m. in Room 223, 911 NE. 11th, Portland, Oregon. Due to increased security requirements, attendees should allow sufficient time to enter the building and complete the required screening process. Photo identification will be required for entry.

FOR FURTHER INFORMATION CONTACT: Ms. Nita Burbank, Public Utilities Specialist, Power Policy Development, PFP–6, P.O. Box 3621, Portland, OR 97208. Interested persons may also call 503–230–3935 or 1–800–622–4519 (toll-free).

SUPPLEMENTARY INFORMATION:

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Part II. Purpose and Scope of Proceeding
Part III. Public Participation
Part IV. Tiered Rate Methodology Proposed Modifications

Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things: publication of a notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; public opportunity to provide both oral and written views related to the proposed rates; opportunity to offer refutation or rebuttal of submitted material; and a decision by the Administrator based on the record. This proceeding is governed by section 1010 of BPA's Rules of Procedure Governing Rate Hearings, 51 FR 7611 (1986) (Procedures). These Procedures implement the statutory section 7(i) requirements.

This proceeding will be conducted under section 1010.10 of the Procedures—Expedited Rate Proceedings. Expedited Rate Proceedings provide for a ROD to be issued 90 days after this Notice. The Administrator has chosen an Expedited Rate Proceeding because of the limited scope of issues that will be addressed in this reopened proceeding and that such issues will not require extensive examination of factual material by BPA or parties.

Section 1010.7 of the BPA Hearing Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any outside communications with BPA and/or DOE personnel regarding BPA's rate case by other Executive Branch agencies, Congress, existing or potential BPA customers (including Tribes), and nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to: (1) Matters of procedure only (the status of the rate case, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters BPA is responsible for under statutes other than the ratemaking provisions; or (5) matters that all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued, which is scheduled to occur on September 2, 2009.

The Bonneville Project Act, 16 U.S.C. 832, the Flood Control Act of 1944, 16 U.S.C. section 825s, the Federal Columbia River Transmission System Act, 16 U.S.C. 838, and the Northwest Power Act, 16 U.S.C. 839, provide guidance regarding BPA ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of acquiring, conserving and transmitting electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable period of years, and certain other costs and expenses incurred by the Administrator.

BPA's proposed TRM modifications are available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase* and are discussed in Part IV below. BPA will be conducting a formal rate proceeding open to rate case parties. Interested parties must file petitions to intervene in order to take part in the formal hearing, as discussed in Part III (A) below. A proposed schedule is as follows. The Hearing Officer will establish a final procedural schedule.

Prehearing/Initial Proposal	June 4.
Clarification	June 9.
Data Requests Deadline	June 10.
Data Responses Deadline	June 16.
Parties file their Direct Case	June 22.
Clarification	June 25.
Data Requests Deadline	June 25.
Data Responses Deadline	July 1.
Rebuttal	July 8.
Public Comments Deadline	July 8.
Clarification	July 10.
Cross Examination	July 16.
Initial Briefs	July 28.
Oral Argument	August 2.
Final Record of Decision	September 2.

Part II—Purpose and Scope of Proceeding

A. Purpose of Proceeding

The TRM, together with new power sales contracts, is a key component implementing BPA's post-2011 power marketing policy and tiered rate construct as defined in BPA's Long-Term Regional Dialogue Final Policy and the corresponding Record of Decision, which were published on July 19, 2007. Because the TRM was

developed and established prior to BPA's 135 PF rate customers signing Regional Dialogue Contracts, the TRM included a special modification provision to allow BPA to propose changes, if BPA and representatives of its PF customers identified and agreed on the changes that would be needed prior to February 1, 2009. These changes would not be subject to the more restrictive requirements under the TRM for modifications after that date. The purpose of the special modification provision was to assure BPA and its customers that the TRM and the accompanying power sales contracts would be consistent and work together.

The TRM provides for a two-tiered PF rate design applicable to firm requirements power service for public utility customers that have signed an applicable Regional Dialogue Contract. The tiered rate design differentiates between the cost of service associated with Tier 1 System Resources and the cost associated with additional amounts of power sold by BPA to serve any remaining portion of a public utility customer's Net Requirement (Tier 2). Contract High Water Marks (CHWM), determined according to the TRM, are one basis for determining how much of each customer's Net Requirement purchase from BPA is charged Tier 1 rates and how much may be charged Tier 2 rates. The TRM specifies that CHWMs will be developed based on public utility customers' FY 2010 load with certain modifications.

B. Scope of the Proceeding

This additional hearing will address the issues as discussed below in Section IV. In this supplemental TRM rate proceeding, the Administrator will not open issues previously determined to be outside the scope of the TRM rate case, as described in the original 2007 **Federal Register** notice [1] and in the final TRM ROD, TRM–12–A–01. Under the TRM, this proceeding is limited to reviewing only the proposed modifications and does not allow BPA or other parties to reexamine issues that was already debated and decided in the prior proceeding.

Therefore, the scope of this supplemental proceeding is limited by those guidelines the Administrator established during the first TRM proceeding and limited to the parameters of the specific issues that are being addressed in Section IV below. Additionally, the TRM defines specific procedures to be followed to propose a modification of the TRM. Any modification that is proposed contrary to the TRM's procedures will not be considered in this proceeding. Pursuant to section 1010.3(f) of the Procedures, the Administrator directs the Hearing Officer to exclude from the record any materials attempted to be submitted or arguments attempted to be made in the proceeding that seek to in any way address the decisions made in the prior proceeding as well as any other modifications to the TRM that were not identified and agreed to by BPA and PF customer representatives prior to February 1, 2009.

C. The National Environmental Policy Act

BPA has previously completed an evaluation under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* of the TRM and its provisions as part of the Administrator's ROD for TRM–12–A–01 (*see* Administrator's ROD, Section 8.0). This NEPA evaluation found that the TRM is an implementation of an already-adopted policy concerning tiered rates with little to no environmental impact, and any potential environmental effects had already been considered and evaluated in prior BPA NEPA documentation. The TRM NEPA evaluation also found that the TRM is consistent with the Market-Driven Alternative that was evaluated in BPA's Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995) and adopted in BPA's Business Plan ROD (August 1995), as well as with the Long-Term Regional Dialogue Policy and its associated NEPA ROD.

BPA is in the process of assessing whether the proposed TRM modifications identified in Part IV represent a significant change in the TRM relevant to environmental effects such that additional evaluation under NEPA from what was included in the TRM–12–A–01 Administrator's ROD is required. The NEPA process is conducted separately from BPA's formal rate proceedings. Therefore, pursuant to section 1010.3(f) of the Procedures, the Administrator directs the Hearing Officer to exclude from the record all evidence and argument that addresses the potential environmental impacts of the proposed TRM modifications.

During the public review and comment period for the proposed TRM modifications, persons interested in submitting comments regarding the potential environmental effects of the proposal may do so by submitting comments to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE. 11th Avenue, Portland, OR 97232. Any such comments received by July 8, 2009 will be considered by BPA's NEPA compliance staff in their review of the proposal.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the section 7(i) hearing process. Apart from the formal hearing process, BPA will accept comments, views, opinions, and information from ''participants,'' who are defined in BPA's Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' comments will be made a part of the official record and considered by the Administrator when making his decision. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Any entity that has intervened in this proceeding may not submit participant comments. Persons who are members or employees of organizations that have intervened in the rate proceeding may submit general comments as participants but may not use the comment procedures to address specific issues raised by their intervenor organization.

The views of participants are important to BPA. Written comments by participants will be included in the record if they are received by 5 p.m. PDT on July 8, 2009. Written views, supporting information, questions, and arguments should be submitted to BPA Public Affairs at the Web or postal address listed in the **ADDRESSES** section.

Persons wishing to become a party to BPA's rate proceeding must notify BPA in writing and file a Petition to Intervene with the Hearing Officer. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to Intervene must state the name and address of the person requesting party status and the person's interest in the hearing. Petitions to Intervene as parties in the rate proceeding are due to the Hearing Officer by 5 p.m. PDT on June 2, 2009, and should be directed as stated in the **ADDRESSES** section above.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the proceeding. Pursuant to section

[1] The details of the elements that were excluded from the earlier proceeding are described in detail at 73 FR 24961, at 24962–63 (2008).

1010.1(d) of BPA's Procedures, BPA waives the requirement in section 1010.4(d) that an opposition to an intervention petition must be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored.

B. Developing the Record

The record of this proceeding will comprise, among other things, comments made by participants, transcripts of all hearings, any written materials submitted by the parties, documents developed by BPA staff, and other materials accepted into the record by the Hearing Officer. Written comments by participants will be included in the record if they are received by 5 p.m., PDT, on July 8, 2009. The Hearing Officer will review the record, supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will adopt the final TRM modifications based on the entire record, which includes the record certified by the Hearing Officer, as described above. The basis for the final TRM modifications will be expressed in the Administrator's ROD. BPA will serve copies of the Final ROD on all parties. The ROD will also be publicly available at *http://www.bpa.gov/corporate/ratecase.*

BPA must continue to meet with customers in the ordinary course of business during the rate case. To comport with the rate case procedural rule prohibiting *ex parte* communications, BPA will provide the prescribed notice of meetings involving rate case issues in order to permit the opportunity for participation by all rate case parties. These meetings may be held on very short notice. Consequently, parties should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding and attend meetings any day during the course of the rate proceeding.

Part IV—Tiered Rate Methodology Proposed Modifications

On January 30, 2009, BPA published the Final TRM Clean Up List pursuant to section 12 of the TRM. The Clean Up List identified nine revisions agreed to by BPA and preference customer representatives designated by the Public Power Council. Revision 1 provides an amendment to the amount of Pend Oreille Public Utility District's Box Canyon Dam resource specified in TRM Attachment C—Existing Resources for CHWMs.

Revision 2, the CHWM adjustment, provides an amendment to the calculation of the CHWM pursuant to section 4.1 of the TRM. During the Clean-Up review, some of BPA's customers became concerned that the effects of the current economic recession may adversely affect their FY 2010 load, thereby reducing their CHWM. BPA met with public power representatives and jointly developed the proposed modification to the calculation of CHWM. The proposed modification would provide each customer with an option to include provisional amounts in its CHWM if it has experienced qualifying load reductions due to the current economic recession. The provisional CHWM would be made permanent if the load recovers within specified parameters.

Revision 3 proposes clarification to certain language regarding Forecast Monthly/Diurnal Tier 1 Load throughout the TRM. These proposed modifications do not change the intent of the original language, but change certain terms to add clarity.

Revision 4 deletes certain language from TRM section 8.5. This proposed modification does not change the intent of the original language, but removes unnecessary language.

Revision 5 adds a minimum duration for public comment during the Rate Period High Water Mark process. The original language in TRM section 4.2.2 provided for public comment, but did not specify a length of time for such comment.

Revision 6 proposes clarification to certain language in TRM section 1.2 regarding cost allocation. This proposed modification does not change the intent of the original language, but changes certain terms to add clarity.

Revision 7 proposes clarification to certain language in TRM sections 4 and 4.2 regarding Net Requirements. This modification will also add a definition of net requirement consistent with the power sales contract definition. These proposed modifications do not change the intent of the original language, but change certain terms to add clarity.

Revision 8 proposes to add language to TRM section 12.5, an action that is not considered to be a revision to the TRM. This proposed modification does not change the intent of the original language, but includes an inadvertent oversight of the basis for allocating an interest credit.

BPA's proposed modifications to the TRM are available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase.* Copies will also be available for viewing at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th Avenue, Portland, Oregon.

Issued in Portland, Oregon, the 21st of May 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–12489 Filed 5–28–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0500; FRL–8910–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Activities Associated With EPA's ENERGY STAR Program in the Residential Sector; EPA ICR No. 2193.02, OMB Control No. 2060–0586

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 to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2009. 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 July 28, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0500, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW.,

Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0500. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Brian Ng, Energy Star Program, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9162; fax number: (202) 343–2200; e-mail address: *ng.brian@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–OAR–2004–0500, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *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 home builders, home owners, home energy verification organizations, lenders, regional energy efficiency programs, home improvement contractors, and national, regional, state, or local government entities and other organizations that serve the home building or home improvement industries.

Title: Information Collection Activities Associated with EPA's ENERGY STAR Program in the Residential Sector.

ICR Numbers: EPA ICR No. 2193.02, OMB Control No. 2060–0586.

ICR Status: This ICR is currently scheduled to expire on November 30, 2009. 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 and 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: EPA introduced ENERGY STAR in 1992 to label energy efficient computers. Since then, EPA and the Department of Energy (DOE) have expanded the ENERGY STAR Program to promote energy efficiency in products and commercial and residential buildings. Increased energy efficiency through ENERGY STAR provides cost savings to businesses and homeowners, reduces greenhouse gas emissions from power plants, and increases U.S. energy security and reliability.

EPA announced ENERGY STAR for New Homes in 1995 as part of its effort to promote energy efficient construction in the new homes market. EPA rolled

out its existing homes effort in 2000 to promote comprehensive, cost-effective upgrades to the existing homes market. These two efforts promote home envelope improvements such as the proper installation of adequate insulation, sealing of holes and gaps that allow air into the home, and installation of energy efficient windows. In addition to the home envelope, EPA promotes energy efficient heating and cooling equipment, including sealing leaky ducts that distribute conditioned air.

EPA has developed this ICR to obtain authorization to collect information from the public for the activities described below.

ENERGY STAR Partnership: An organization interested in joining ENERGY STAR as a partner is asked to submit a partnership agreement establishing its commitment to promoting ENERGY STAR. Partners agree to undertake efforts such as educating staff and the public about their partnership with ENERGY STAR, developing and implementing a plan to improve energy performance in homes, and highlighting achievements utilizing the ENERGY STAR logos. Partners are encouraged to undertake related activities for added benefit and/or public recognition, such as committing to build 100% ENERGY STAR qualified new homes or offering homebuyers ENERGY STAR's Advanced Lighting Package.

Evaluation: Partners and other program participants are asked to periodically submit information to EPA as needed to assist in evaluating ENERGY STAR's effectiveness in helping organizations promote energy efficiency in homes, to assess partners' level of interest and ability in promoting ENERGY STAR in the residential sector, and to determine the impact that ENERGY STAR has on the supply and demand for energy-efficient homes and home improvement products and services. For example, EPA periodically contacts a subset of partners about their participation in the ENERGY STAR Program to determine how it has impacted their organization and areas for improvement. EPA also provides tools to help educate homeowners about their homes' energy efficiency. For example, a homeowner can input basic information about their home and their utility costs into EPA's Home Energy Yardstick to compare their household's energy use to others and get recommendations for improvement. EPA would like to utilize some of this information to evaluate the tool's usefulness as well as evaluate the impact of energy efficiency improvements as well as other characteristics of the home on home energy efficiency.

Quarterly Reporting: Partners are asked to submit information each calendar quarter to assist EPA in tracking and measuring progress and program implementation. This includes submitting quarterly updates on partners' level of activity in qualifying new homes for the ENERGY STAR label and activity in improving the energy efficiency of existing homes.

ENERGY STAR Awards: Each year partners are eligible for an ENERGY STAR award, which recognizes organizations demonstrating outstanding support in promoting ENERGY STAR. This award program provides partners with public recognition and market differentiation. There is an application form that is submitted to EPA by partners interested in being eligible for an award.

Outreach Partnership: Partners have the opportunity to participate in an outreach partnership with EPA to develop public education campaigns featuring the benefits of ENERGY STAR qualified homes. Partners interested in participating in the outreach program are asked to submit a form detailing their level of participation.

Finally, organizations are encouraged to participate in other voluntary activities under the program, such as pilot projects designed to help EPA find better ways to encourage energy efficiency in new and existing homes.

Burden Statement: The annual burden for joining ENERGY STAR and conducting related activities is estimated to range from about 1 to 100 hours per respondent. This includes time for preparing and submitting the Partnership Agreement and related information, if requested, and carrying out specified activities under the partnership (*e.g.,* verifying site-built homes to see if they qualify for an ENERGY STAR Label). The annual burden for partner evaluations is estimated to range from 15 minutes to 4 hours per respondent. This includes time for responding to EPA's questions posed during a phone interview or other method. The annual burden for quarterly reporting is estimated to range from about 3.5 to 10 hours per respondent. This includes time for submitting specified information to EPA on a quarterly basis. The annual burden for the annual awards is estimated to range from about 10.5 to 30 hours per respondent. This includes time for preparing and submitting the application materials and, if requested, an annual report. The annual burden for the outreach activities is estimated to range from about 1 to 40 hours per respondent. This includes time for preparing and submitting the commitment form and performing outreach activities under the partnership (*e.g.,* implementing an outreach campaign).

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: 80,000.

Frequency of response: Once, quarterly, annually, on occasion.

Estimated total annual burden hours: 297,997.

Estimated total annual costs: $18.7 million. This includes an estimated cost of approximately $18.6 million for labor and $0.1 million for capital investment, operation and maintenance.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 122,548 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase results partly from adjustments to EPA's burden estimates of its existing collections (*e.g.,* updates to the number of respondents and activities). The increase also results from some new, voluntary programs that EPA would like to offer industry and homeowners to further promote energy efficiency in new and existing homes. For example, EPA intends to offer a voluntary, online tool for homeowners to compare their home's energy efficiency to other, similar homes. They would enter basic information from their utility bills and their home's size and location to derive comparative information. This would help them take steps to reduce their home's energy usage and costs. Because the tool would be user-friendly and yet beneficial, EPA

estimates that many homeowners would use it (*i.e.,* 75,000 homeowners/yr.).

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: May 21, 2009.

Kathleen Hogan,

Director, Climate Protection Partnerships Division.

[FR Doc. E9–12467 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8910–7]

Biennial Determination of the Waste Isolation Pilot Plant's Compliance With Applicable Federal Environmental Laws for the Period 2006 to 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Based on documentation submitted by the U.S. Department of Energy (DOE) for the Waste Isolation Pilot Plant (WIPP), the U.S. Environmental Protection Agency (EPA or ''we'') determined that between 2006 and 2008, DOE operated the WIPP facility in compliance with applicable Federal statutes, regulations, and permit requirements designated in Section 9(a)(1) of the WIPP Land Withdrawal Act, as amended. The Secretary of Energy was notified of the determination via a letter from EPA Administrator Lisa P. Jackson dated May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Nick Stone; telephone number: (214) 665–7226; address: WIPP Project Officer, Mail Code 6PD–O, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0324; FRL–XXXX–X]. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

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 made this determination under the authority of Section 9 of the WIPP Land Withdrawal Act (WIPP LWA). (Pub. L. 102–579 and 104–201.) Section 9(a)(1) of the WIPP LWA requires that, as of the date of the enactment of the WIPP LWA, DOE shall comply with respect to WIPP with (1) regulations for the management and storage of radioactive waste (40 CFR Part 191, Subpart A); (2) the Clean Air Act; (3) the Solid Waste Disposal Act; (4) the Safe Drinking Water Act; (5) the Toxic Substances Control Act; (6) the Comprehensive Environmental Response, Compensation, and Liability Act; and (7) all other applicable Federal laws pertaining to public health and safety or the environment. Section 9(a)(2) of the WIPP LWA requires DOE biennially to submit to EPA documentation of continued compliance with the laws, regulations, and permit requirements set forth in Section 9(a)(1). (DOE must also submit similar documentation of compliance with the Solid Waste Disposal Act to the State of New Mexico.) Section 9(a)(3) requires the Administrator of EPA to determine on a biennial basis, following the submittal of documentation of compliance by the Secretary of DOE, whether the WIPP is in compliance with the pertinent laws, regulations, and permit requirements, as set forth at Section 9(a)(1).

We determined that for the period 2006 to 2008, the DOE-submitted documentation showed continued compliance with 40 CFR Part 191, subpart A, the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. With respect to other applicable Federal laws pertaining to public health and safety or the environment, as required by Section 9(a)(1)(G), DOE's documentation also indicates that DOE was in compliance with the Clean Water Act, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and certain statutes under the jurisdiction of the Department of the Interior.

This determination is not in any way related to, or a part of, our certification and recertification decisions regarding whether the WIPP complies with EPA's disposal regulations for transuranic radioactive waste at 40 CFR Part 191.

Dated: May 22, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–12555 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8593–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.* Weekly receipt of Environmental Impact Statements filed 05/18/2009 through 05/22/2009, pursuant to 40 CFR 1506.9.

EIS No. 20090168, Final EIS, AFS, CO, Hermosa Landscape Grazing Analysis Project, Proposes to Continue to Authorize Livestock Grazing Cascade Reservoir, Dutch Creek, Elbert Creek, Hope Creek South Fork, and Upper Hermosa Allotments, Columbine Ranger District, San Juan National Forest, La Plata and San Juan Counties, CO, Wait Period Ends: 06/29/2009, Contact: Cam Hooley 970–884–1414.

EIS No. 20090169, Final Supplement, FHW, MO, Interstate 70 Corridor Improvements, Kansas City to St. Louis, Updated Information, Evaluates if a Truck-Only Lane Strategy is Viable, Kansas City to St. Louis, MO, Wait Period Ends: 06/29/

2009, Contact: Peggy Casey 573–636–7104.

EIS No. 20090170, Draft EIS, FHW, WI, Zoo Interchange Corridor Study, Reconstruction to I–94 from 70th Street to 124 Street and on US 45 from Burleigh Street to I–894/US 45 and Lincoln Avenue in Milwaukee County, WI, Comment Period Ends: 07/13/2009, Contact: Allen Radlifff 608–829–7500.

EIS No. 20090171, Draft EIS, NOA\SFW, WA, PROGRAMMATIC—Lower Duwamish River Natural Resource Damage Assessment (NRDA) Restoration Plan, Implementation, King County, WA, Comment Period Ends: 07/28/2009, Contact: Patricia Montanio 301–713–2325.

Department of the Commerce's/NOA and the Department of Interior's/SFW are Joint Lead Agencies on this project.

EIS No. 20090172, Final EIS, NOA, CA, Southwest Fisheries Science Center Replacement, Construction and Operation, located on University of California, La Jolla, CA, Wait Period Ends: 06/29/2009, Contact: William F. Broglie 301–713–0836.

EIS No. 20090173, Draft EIS, UCG, 00, Goethals Bridge Replacement Project, Construction of Bridge across the Arthur Kill between Staten Island New York and Elizabeth, New Jersey, Funding and USCG Bridge Permit, NY and NJ, Comment Period Ends: 07/13/2009, Contact: Shelly Sugarman 202–372–1521.

EIS No. 20090174, Final EIS, FHW, CA, Schuyler Heim Bridge Replacement and SR–47 Expressway Improvement Project, New Information related to Health Risk Associated with Air Toxics, Funding, US Coast Guard Bridge Permit, US Army COE Section 10 and 404 Permits, Ports of Long Beach and Los Angeles, Los Angeles County, CA, Wait Period Ends: 06/29/2009, Contact: Cesar Perez 916–498–5065.

Dated: June 26, 2009.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E9–12550 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8593–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 17, 2009 (74 FR 17860).

Draft EISs

EIS No. 20090065, ERP No. D–COE–E39077–NC, Western Wake Regional Wastewater Management Facilities, Proposed Construction of Regional Wastewater Pumping, Conveyance, Treatment, and Discharge Facilities to Serve the Towns of Apex, Cary, Holly Springs and Morrisville, Research Triangle Park, Wake County, NC.

Summary: EPA expressed environmental concerns about the lack of water quality modeling for a potential Harris Lake discharge and the need for a more detailed wetlands delineation concerning the transmission corridor. Rating EC2.

EIS No. 20090092, ERP No. D–FHW–H40195–MO, East Columbia Transportation Project, To Improve the Transportation Network in Eastern Columbia/Boone County by: (1) Extending Route 740 from its Terminus at US–63, along a new Alignment, to I–70 at the existing St. Charles road interchange, (2) Improving existing Broadway (Route WW) to Olivet Road and (3) Extending Ballenger Lane, from Future Route 740 to Clark Lane, City of Columbia, Boone County, MO.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090094, ERP No. D–UAF–K11124–HI, Fort Kamehameha Historic District Buildings and Structures, Proposes to Dispose of their Obligation of Continuing Management and Maintenance, Hickam Air Force Base (AFB), HI.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090085, ERP No. DR–FHW–K40264–CA, Partially Revised Tier 1—Placer Parkway Corridor Preservation Project, Select and Preserve a Corridor for the Future Construction from CA–70/99 to CA 65, Placer and Sutter Counties, CA.

Summary: EPA continues to have environmental concerns about impacts to aquatic and biological resources. Rating EC2.

EIS No. 20080405, ERP No. DS–COE–G34043–LA, Inner Harbor Navigation Canal (IHNC) Lock Replacement Project, Proposal for Relieving Navigation Traffic Congestion Associated with IHNC Lock, Located between the St. Claude Avenue and North Claiborne Avenue Bridge, Orleans, LA.

Summary: EPA expressed environmental concerns about the proposed project and requested additional information with regard to mitigation of potential adverse impacts. Rating EC2.

EIS No. 20090067, ERP No. DS–FHW–G40184–TX, Trinity Parkway Project, New and Additional Information, Construction of a Six-Lane Controlled Access Toll Facility from IH–35 E/TX–183 to US–175/TX–310, US Army COE Section 10 and 404 Permits, Dallas County, TX.

Summary: EPA expressed environmental concerns about impacts to wetlands, water quality, and wildlife habitat, and requested additional information and impact analysis. Rating EC2.

Final EISs

EIS No. 20080392, ERP No. F–BLM–K67057–NV, Cortez Hills Expansion Project, Proposes to Construct and Operate a New Facilities and Expansion of the Existing Open-Pit Gold Mining and Processing Operations, Crescent Valley, Lander and Eureka Counties, NV.

Summary: EPA expressed environmental concerns about the potential loss of up to 4.2 acres of wetland/riparian habitat from filling for project facilities and from groundwater drawdown.

EIS No. 20090090, ERP No. F–FHW–F40440–00, Blue Water Bridge Plaza Study and Improve to the I–94/T–69 Corridor, To Provide Safe, Efficient and Secure Movement of People and Goods across the Canadian-US Border, Port Huron Area, St. Clair County, MI.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20090111, ERP No. F–COE–K39112–CA, Middle Harbor Redevelopment Project, Proposal to Increase Container Terminal Efficiency to Accommodate a Portion of the Predicted Future Containerized Cargo, Section 10 and 404 Permits, Port of Long Beach, Los Angeles County, CA.

Summary: EPA recommended that the Record of Decision include additional information to demonstrate that the proposed action would represent the least environmentally damaging practicable alternative under the Clean Water Act Section 404(b)(1) Guidelines.

EIS No. 20090114, ERP No. FB–COE–K32046–CA, Port of Los Angeles Channel Deepening Project, To Dispose of Approximately 3.0 Million Cubic Yards of Dredge Material Required to

Complete the Channel Deepening Project and to Beneficially Reuse the Dredge Material with the Port of Los Angeles, Los Angeles County, CA.

Summary: EPA continues to have environmental concerns about cumulative impacts to air quality and human health, and avoiding ocean disposal of sediments. EPA recommended commitments to reduce air quality impacts and optimize beneficial reuse of dredge material.

EIS No. 20090063, ERP No. FS–UAF–A10051–MA, Pave PAWS Early Warning Radar Operation Project, Continued Operation of the Solid-State Phased-Array Radar System (SSPARS), also known as Pave, Phased Array Warning Systems (PAWS), Cape Cod Air Force Station, MA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090097, ERP No. FS–COE–E11060–NC, Topsail Beach Interim (Emergency) Beach Fill Project—Permit Request, Proposal to Place Sand on 4.7 miles of the Town's Shoreline to Protect the Dune Complex and Oceanfront Development, Onslow and Pender Counties, NC.

Summary: EPA agrees with relocating the sand borrow area slightly seaward in order to lessen impacts to the inlet ebb tidal delta. EPA recommended that corrective actions be identified in the monitoring plan should adverse impacts be greater than expected.

Dated: May 26,2009.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E9–12547 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8911–1]

Meeting of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) Stakeholder Briefing

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the Stakeholder Briefing of the Mid-Atlantic/Northeast Visibility Union (MANE–VU). This meeting will deal with matters relative to Regional Haze and visibility improvement in Federal Class I areas within MANE–VU.

DATES: The meeting will be held on June 10, 2009 starting at 1 p.m. (EDT).

Location: Holiday Inn BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; (410) 859–8400.

FOR FURTHER INFORMATION CONTACT: For questions regarding meeting specifics, documents and press inquiries contact: Kromeklia Bryant, Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org;* Web site: *http://www.manevu.org.*

SUPPLEMENTARY INFORMATION: The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

Type of Meeting: This meeting will be open to the public.

Agenda: Copies of the final agenda are available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org* or via the MANE–VU Web site at *http://www.manevu.org*.

Dated: May 21, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–12552 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8911–2]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2009 Annual Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

DATES: The meeting will be held on June 10, 2009 starting at 9 a.m. (EDT) and ending at 5 p.m.

Location: Holiday Inn BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; (410) 859–8400.

FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org;* Web site: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport commission is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*).

Dated: May 21, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–12551 Filed 5–28–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 09–21; DA 09–810]

Auction of FM Broadcast Construction Permits Scheduled for September 1, 2009; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 79

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of FM broadcast construction permits (Auction 79). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

DATES: Applications to participate in Auction 79 must be filed prior to 6 p.m. Eastern Time (ET) on June 25, 2009. Bidding for permits in Auction 79 is scheduled to begin on September 1, 2009.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal questions: Howard Davenport or Lynne Milne at (202) 418–0660. For general auction questions: Debbie Smith

or Linda Sanderson at (717) 338–2868. *Media Bureau, Audio Division:* For licensing information and service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700. To request materials in accessible formats (braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 79 Procedures Public Notice,* which was released on April 17, 2009. The complete text of the *Auction 79 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 79 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com,* using document number DA 09–810 for the *Auction 79 Procedures Public Notice.* The *Auction 79 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/79/.*

I. General Information

A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) announced the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits. This auction, which is designated as Auction 79, is scheduled to commence on September 1, 2009. On February 27, 2009, the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 79. Interested parties submitted three comments and four reply comments in response to the *Auction 79 Comment Public Notice,* 74 FR 10578, March 11, 2009.

i. Construction Permits To Be Offered in Auction 79

2. Auction 79 will offer 122 construction permits in the FM broadcast service as listed in Attachment A of the *Auction 79 Procedures Public Notice.* The construction permits to be auctioned are for 122 new FM allotments, and include construction permits for three FM allotments that were defaulted on after a previous auction, and a construction permit for one FM allotment that was offered but not sold in Auctions 37 and 62. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments (Table), pursuant to the Commission's established rulemaking procedures, and are designated for use in the indicated communities.

3. The Bureaus denied one commenter's request that the Bureaus add to the Auction 79 inventory construction permits for two specified vacant allotments, added to the Table October 10, 2008, as well as a second commenter's request to add all new FM allotments approved in a specified rulemaking proceeding. Further, the Bureaus explained that a request for a low power television station allotment or construction permit was beyond the scope of this proceeding, which is confined to developing competitive bidding procedures for an FM auction.

4. Applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction 79 Procedures Public Notice.* When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity (MX) exists for auction purposes, and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing, but fails to submit a timely upfront payment, will retain its status as an applicant in Auction 79 and will remain subject to the Commission's anti-collusion rules, but, having purchased no bidding eligibility, will not be eligible to bid.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201–73.333 and 73.1001–73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 CFR 1.2001–1.2112 and 73.5000–73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 79 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. The Commission may amend or supplement the information contained in its public notices at any time. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion and Compliance With Antitrust Laws

6. Applicants for Auction 79 are reminded that they remain subject to the provisions of the Commission's anti-collusion rules, 47 CFR 1.2105(c) and 73.5002(d), against any communication, directly or indirectly, about bids, bidding strategy, or the post-auction market structure, until the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. The *Auctions 79 Procedures Public Notice* contains additional guidance concerning the application of the anti-collusion rules. Potential applicants are strongly encouraged to review that guidance and seek additional information should they have any questions.

7. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report

such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The applicant's obligation to report any such communication continues beyond the five-day period, even if the report is not made within the five-day period. Parties reporting communications pursuant to 47 CFR 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. Parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

8. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership, or agreement or other arrangement entered into relating to the competitive bidding process.

9. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment D of the *Auction 79 Procedures Public Notice.* Most of these documents are available on the Commission's auction anti-collusion Web page.

10. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

iii. Due Diligence

11. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities in this auction. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. The Commission makes no representations or warranties about the use of this spectrum for particular purposes.

12. Applicants are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 79 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction 79 are strongly encouraged to continue such research throughout the auction.

13. Applicants should also be aware that certain pending and future proceedings, including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review, before the Commission may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction 79. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction 79. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific FM construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree, to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 79. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental review obligations of Commission permittees and licensees.

iv. Use of Integrated Spectrum Auction System

14. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 79 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

15. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other Federal environmental statutes.

C. Auction Specifics

i. Auction Start Date

16. Bidding in Auction 79 will begin on Tuesday, September 1, 2009. Although two commenters suggested that bidding be postponed, the Bureaus decided that bidding would begin on the date initially proposed. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Bidding Methodology

17. The bidding methodology for Auction 79 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

18. The following dates and deadlines apply:

Auction Seminar	June 16, 2009.
Short-Form Application (FCC Form 175), Filing Window Opens	June 16, 2009; 12 noon ET.
Short-Form Application (FCC Form 175), Filing Window Deadline	June 25, 2009; prior to 6 p.m. ET.
Upfront Payments (via wire transfer)	July 31, 2009; 6 p.m. ET.
Mock Auction	August 28, 2009.

Auction Begins	September 1, 2009.

iv. Requirements for Participation

19. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, June 25, 2009, following the electronic filing procedures set forth in Attachment B of the *Auction 79 Procedures Public Notice;* (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, July 31, 2009, following the procedures and instructions set forth in Attachment C of the *Auction 79 Procedures Public Notice;* and (3) comply with all provisions outlined in the *Auction 79 Procedures Public Notice* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

A. Short-Form Applications

20. Entities and individuals seeking construction permits available in Auction 79 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on June 25, 2009, following the procedures prescribed in Attachment B of the *Auction 79 Procedures Public Notice.* Mailings for Auction 79 will be sent by the Bureaus only to the contact's address listed in the applicant's short-form application.

21. Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. Applications specifying the same FM station construction permit are considered mutually exclusive. A short-form application that does not identify its proposed station(s) as a noncommercial educational station(s) will be considered to be an application for a commercial broadcast station(s).

22. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. Each applicant should read carefully the instructions provided in the *Auction 79 Procedures Public Notice,* including its Attachment B, and should consult the Commission's rules to ensure that all of the information that is required by the Commission's rules and relevant public notices is included with its short-form application. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

23. Applicants also should note that submission of a short-form application, and any amendments, constitutes a representation by the certifying official that the certifier is an authorized representative of the applicant, that the certifier has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct.

B. Permit Selection

24. An applicant must select on its short-form application the construction permits on which it wants to bid from the Eligible Permits list. Applicants will not be able to change their construction permit selections after the short-form application filing deadline.

C. New Entrant Bidding Credit

25. Applicants may be able to qualify for either a 35 or 25 percent new entrant bidding credit, the amount by which a bidder's winning bid is discounted, depending on the number of other media of mass communications that are attributable to the applicant and its attributable interest holders. Media of mass communications are defined in 47 CFR 73.5008, and include both commercial and noncommercial educational full-power broadcast stations.

26. Attributable interests are defined in 47 CFR 73.3555 and its Note 2. The media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status are attributed. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting. In 2008, the Commission relaxed the equity/debt plus attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555. The Commission will allow the holder of an equity or debt interest in the applicant to exceed the 33 percent threshold without triggering attribution provided the combined equity and debt in the eligible entity is less than 50 percent, or the total debt in the eligible entity does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.

27. The applicant's attributable interests, and therefore, its maximum new entrant bidding credit eligibility, will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the new entrant bidding credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form application filing deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing deadline. Prospective bidders are reminded, however, that events occurring after the short-form application filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

28. The unjust enrichment provisions of 47 CFR 73.5007(c) apply to a winning bidder who utilizes a bidding credit, and subsequently seeks to assign or transfer its construction permit or license to an entity not qualifying for the same level of bidding credit.

29. The Bureaus were unable to adopt the suggestions of three commenters to revise the criteria for and the amount of the new entrant bidding credit. Commenters sought to re-define new entrant, to limit the number of facilities to which the new entrant bidding credit may be applied, and to impose a holding period for facilities obtained using the new entrant bidding credit. These changes would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a rulemaking proceeding.

30. For the same reasons, the Bureaus were not able to consider one commenter's proposal to adopt a new discount on the filing fees when an application is submitted for a new allocation by anyone who has not owned a Commission licensed station within five years prior to the date of filing or previously filed for a new allocation. This particular proposal is

beyond the scope of the Bureaus developing competitive bidding procedures for Auction 79.

D. Disclosure of Bidding Arrangements

31. An applicant must identify in its short-form application each party with whom it has entered into any agreement, arrangement, or understanding of any kind relating to the construction permits being auctioned, including any agreement relating to a post-auction market structure. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline. The *Auction 79 Procedures Public Notice contains further guidance on these disclosure requirements.*

E. Provisions Regarding Former and Current Defaulters

32. Current defaulters are not eligible to participate in Auction 79, but former defaulters can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than the normal upfront payment amounts. For purposes of this rule, a defaulter (current or former) includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110. A default includes any default on any payment for any Commission construction permit or license, as well as any delinquency on any non-tax debt owed to any Federal agency, as of the filing deadline for short-form applications. An applicant, its affiliate, its controlling interest, or an affiliate of its controlling interest is considered a ''former defaulter'' only if it has remedied all such defaults and cured all of the outstanding non-tax delinquencies before the filing deadline for short-form applications.

F. Minor Modifications to Short-Form Applications

33. After the deadline for filing short-form applications (FCC Form 175) at 6 p.m. ET on June 25, 2009, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their short-form applications. Such impermissible changes include, but are not limited to, a change of certifying official, a change of a construction permit selection, a change of control of the applicant, a claim of eligibility for a higher percentage of bidding credit, or a change of identification of the application's proposed facilities from noncommercial educational to commercial.

G. Maintaining Current Information in Short-Form Applications

34. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in a bidding credit percentage must be reported immediately.

III. Pre-Auction Procedures

A. Auction Seminar—June 16, 2009

35. On Tuesday, June 16, 2009, the Commission will conduct a seminar for parties interested in participating in Auction 79 at FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements, and other matters related to this auction. For individuals who are unable to attend, a webcast of this seminar will be available from the Commission's Auction 79 Web page at *http://wireless.fcc.gov/auctions/79/.*

B. Short-Form Applications—Due Prior to 6 p.m. ET on June 25, 2009

36. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B of the *Auction 79 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on June 25, 2009. Late applications will not be accepted.

C. Application Processing and Minor Corrections

37. After the deadline for filing FCC Form 175 applications, the Commission subsequently will issue a public notice identifying: (1) Those applications that are complete; (2) those applications that are rejected; and (3) those applications that are incomplete because of minor defects that may be corrected and the deadline for resubmitting corrected applications.

D. Upfront Payments—Due July 31, 2009

38. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6 p.m. ET on July 31, 2009.

i. Making Upfront Payments by Wire Transfer

39. Wire transfer payments must be received before 6 p.m. ET on July 31, 2009, consistent with instruction set forth in the *Auction 79 Procedures Public Notice.* The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it into the proper FCC account. The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

ii. FCC Form 159

40. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction 79 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

41. Applicants must make upfront payments to obtain bidding eligibility. The amount of the upfront payment determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. The Bureaus declined to adopt for Auction 79 a commenter's suggestion to impose additional upfront payment requirements on applicants selecting more than ten percent of the FM construction permits in Auction 79.

42. In order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

43. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

44. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110. If an applicant is a former defaulter, it must calculate its upfront payment for all of its selected construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its short-form application, the applicant will not be eligible to participate in the auction.

E. Remote Electronic Bidding

45. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175.

F. Mock Auction—August 28, 2009

46. All qualified bidders will be eligible to participate in a mock auction on Friday, August 28, 2009. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

47. The first round of bidding for Auction 79 will begin on Tuesday, September 1, 2009. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

48. The Bureaus will auction all construction permits in Auction 79 in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

49. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 79. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the *Auction 79 Procedures Public Notice.* Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its short-form application as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

50. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific minimum percentage of their current bidding eligibility during each round of the auction.

51. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round.

52. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iii. Auction Stages

53. A bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 75 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Bureaus have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also have other mechanisms by which they may influence the speed of an auction.

iv. Activity Rule Waivers

54. Each bidder in the auction will be provided with three activity rule waivers. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit.

v. Auction Stopping Rules

55. To reduce the need for a provisionally winning bidder to monitor subsequent bidding rounds for higher bids, two commenters proposed alternative stopping procedures for this auction, which differ from the stopping procedures proposed by the Bureaus by halting bidding on a particular construction permit before bidding closes simultaneously on all construction permits. Because these alternative stopping procedures would reduce the flexibility of bidders to implement backup strategies in response to price information revealed as bidding continues in multiple bidding rounds, the Bureaus will employ a simultaneous stopping rule approach for Auction 79. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

56. Auction 79 will begin under the simultaneous stopping rule approach, and the Bureaus retained the discretion to employ later a modified stopping rule, a special stopping rule, or to keep the auction open even if no bidder places any new bids or applies a waiver in a round. Moreover, the Bureaus may use the modified stopping rule with or without prior announcement during the auction.

vi. Auction Delay, Suspension, or Cancellation

57. The Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.

B. Bidding Procedures

i. Round Structure

58. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

ii. Minimum Opening Bids

59. The specific minimum opening bid amounts for the construction permits available in Auction 79 are set forth in Attachment A of the *Auction 79 Procedures Public Notice.*

iii. Bid Amounts

60. In each round, eligible bidders will be able to place a bid on a given construction permit in any of up to nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

iv. Provisionally Winning Bids

61. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

62. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round.

v. Bidding

63. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 79. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

64. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

65. If a bidder has sufficient eligibility to place a bid on the particular construction permit, an eligible bidder will be able to place bids in each round on that construction permit in any of nine different bid amounts. For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

66. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined.

67. During a round, an eligible bidder may submit bids for as many construction permits as it wishes, (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. If a bidder submits multiple bids for the same construction permit in the same round—multiple bids on the exact same construction permit, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed bids do not count towards the bidder's current activity.

vi. Bid Removal and Bid Withdrawal

68. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.,* a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid.

69. Bidders in Auction 79 are prohibited from withdrawing any bid after the close of a round in which the bid was placed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 79, even if a bid was mistakenly or erroneously made.

vii. Round Results

70. Reports reflecting bidders' identities for Auction 79 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

71. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

viii. Auction Announcements

72. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

73. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 301).

A. Down Payments

74. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 79 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

75. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 301)

76. Within thirty days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for FM Construction Permit) and required exhibits, for each construction permit they won through Auction 79. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

77. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The Bureaus have set the additional default payment for this auction at twenty percent of the applicable bid.

78. Finally, in the event of a default, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

E. Refund of Remaining Upfront Payment Balance

79. Applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront payments before the close of the auction.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E9–12523 Filed 5–28–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009–N–06]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection known as ''Community Support Requirements,'' which has been assigned control number 2590–0005 by the Office of Management and Budget (OMB). The FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on September 30, 2009.

DATES: Interested persons may submit comments on or before July 28, 2009.

Comments: Submit comments to the FHFA using any one of the following methods: *E-mail: regcomments@fhfa.gov.* Please include Proposed Collection; Comment Request: Community Support Requirements (No. 2009–N–06) in the subject line of the message.

Mail/Hand Delivery: Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552, Attention: Public Comments/Proposed Collection; Comment Request: ''Community Support Requirements,'' (No. 2009–N–06). *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

We will post all public comments we receive without change, including any personal information you provide, such

as your name and address, on the FHFA Web site at *http://www.fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Reggie Ellison, Senior Program Analyst, 202–408–2968 (not a toll-free number), *Reggie.Ellison@fhfa.gov.* The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the FHFA to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (Bank) members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). In establishing these community support requirements for Bank members, the FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. 12 U.S.C. 1430(g)(2). 12 CFR part 944 implements section 10(g) of the Bank Act. *See* 12 CFR part 944. The rule provides uniform community support standards all Bank members must meet and review criteria FHFA staff must apply to determine compliance with section 10(g). More specifically, section 944.2 of the rule (12 CFR 944.2) implements the statutory community support requirement and requires each member selected for review to submit a completed Community Support Statement Form to the FHFA. A copy of the Community Support Statement Form is attached to this Notice. Section 944.3 (12 CFR 944.3) establishes community support standards for the two statutory factors—CRA and first-time homebuyer performance—and provides guidance to a respondent on how it may satisfy the standards. Sections 944.4 and 944.5 (12 CFR 944.4–5) establish the procedures and criteria the FHFA uses in determining whether Bank members satisfy the statutory and regulatory community support requirements.

The information collection contained in the Community Support Statement Form and sections 944.2 through 944.5 of the rule are necessary to enable and are used by the FHFA to determine whether Bank members satisfy the statutory and regulatory community support requirements. Only Bank members that meet these requirements may maintain continued access to long-term Bank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 2590–0005. The OMB clearance for the information collection expires on September 30, 2009. The likely respondents are institutions that are Bank members.

B. Burden Estimate

The FHFA estimates the total annual average number of respondents at 4100 Bank members, with 1 response per member. The estimate for the average hours per response is one hour. The estimate for the total annual hour burden is 4100 hours (4100 members × 1 response per member × 1 hour).

C. Comment Request

The FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Dated: May 21, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY
COMMUNITY SUPPORT STATEMENT

FHFA Form # 060
(04/2009)

(see instructions page 2)

Name of Institution: _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Docket Number: _____

Contact Person: (Mr./Ms.) _____ **Title:** _____

Phone Number: (___) _____ **Fax Number:** (___) _____

I. CRA Factor
Most recent federal CRA Rating: _____ CRA Evaluation Date: _____

II. First-time Homebuyer Factor *(You may complete either Section A or B, or both sections. Members with "Outstanding" federal CRA ratings need not complete this section.)*

A. Complete the following four questions using data for the past year.

1. Number of mortgage loans made to first-time homebuyers _____
2. Dollar amount of loans made to first-time homebuyers $ _____
3. Loans made to first-time homebuyers as a percentage of all mortgage loans _____%
4. Dollars loaned to first-time homebuyers as a percentage of all mortgage dollars loaned _____%

B. Check as many boxes as appropriate

1. In-house first-time homebuyer program *(e.g.* marketing plans and outreach programs) _____
2. Other in-house lending products that serve first-time homebuyers or low- and moderate-income homebuyers _____
3. Flexible underwriting standards for first-time homebuyers _____
4. Participate in nationwide first-time homebuyer programs (Fannie Mae, Freddie Mac, etc.) _____
5. Participate in federal government programs that serve first-time homebuyers (FHA, VA, etc.) _____
6. Participate in state or local government programs targeted to first-time homebuyers _____
7. Financial support or technical assistance to community groups or organizations that assist first-time homebuyers _____
8. Participate in loan consortia that make loans to first-time homebuyers _____
9. Participate in or support special counseling or homeownership education targeted to first-time homebuyers _____
10. Hold investments or make loans that support first-time homebuyer programs _____
11. Hold mortgage-backed securities that may include a pool of loans to low and moderate-income homebuyers _____
12. Participate in service organizations that provide mortgages _____
13. Participate in FHFA community lending programs _____
14. Other (see instructions for Part II) _____

III. Certify that information in this Community Support Statement and the attachments is correct to the best of your knowledge by filling out the information below.

Signed _____ Title _____

Print Name _____ Date _____

Community Support Statement Instructions

Purpose: To maintain continued access to long-term advances, section 10(g) of the Federal Home Loan Bank Act [12 U.S.C. §1430(g)] requires the Federal Housing Finance Agency (FHFA) to take into account a Federal Home Loan Bank member's performance under the Community Reinvestment Act of 1977 [12 U.S.C. §2901 et seq.] (CRA) and its record of lending to first-time homebuyers. For purposes of community support review, the term "long-term advances" means advances with a term to maturity greater than one year.

Part I (CRA Factor): Members subject to CRA may complete this section. Indicate your institution's most recent federal CRA evaluation rating and date. [If your institution is not subject to CRA, indicate this in the CRA evaluation field on this form.]

If a member's most recent federal CRA evaluation is rated "Needs to Improve," the FHFA will place that member on probation until it receives the rating from its next CRA examination. During the probationary period, it will retain access to long-term advances. If the member does not receive an improved CRA rating at its next CRA evaluation, its access to long-term advances will be restricted.

If a member's most recent federal CRA rating is "Substantial Non-compliance," the FHFA immediately will take action to restrict that member's access to long term advances. The restriction will remain in effect until the member's rating improves.

Part II (First-time Homebuyer Factor): All members, except those with "Outstanding" federal CRA ratings must complete this section. An institution may demonstrate assistance to first-time homebuyers in many ways, but the FHFA is particularly interested in actual loans, products, and services to first-time homebuyers. Although completion of both Section A and Section B is requested, you may satisfy the first-time homebuyer factor by demonstrating adequate lending performance (Section A), by demonstrating participation in programs that assist first-time homebuyers (Section B), or by a combination of both factors. If the information requested in Part II is inadequate to reflect your institution's compliance with the first-time homebuyer factor, you may attach a one-page description of your efforts to assist first-time homebuyers and/or an explanation of factors affecting your institution's ability to assist first-time homebuyers. No other information beyond this one-page description will be considered.

If a member does not submit evidence of assistance to first-time homebuyers, the FHFA immediately will take action to restrict that member's access to long term advances. The restriction will remain in effect until the member submits information satisfactory to the FHFA.

Part III (Certification): All members must complete this section. An appropriate senior official must certify that the information in this Community Support Statement and the attachments is correct to the best of his/her knowledge.

Assistance: Your Federal Home Loan Bank has a Community Support Program that can assist you in preparing your Community Support Statement.

Once you have completed this form, please submit it, along with any attachments, to the Federal Housing Finance Agency, Office of Housing Mission and Goals, 1625 Eye Street, N.W., Washington, D.C. 20006-4001, or by electronic mail to emma.fitgerald@fhfa.gov

[FR Doc. E9–12400 Filed 5–28–09; 8:45 am]
BILLING CODE C

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 June 15, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Charles A. Adams, individually, Holly A. Bailey; Howell Paving, Inc.; and Howell–Adams Foundation, all of Mattoon, Illinois; as a group acting in concert, to acquire voting shares of First Mid Illinois Bancshares, Inc., and thereby indirectly acquire voting shares of First Mid Illinois Bank & Trust, National Association, both of Mattoon, Illinois.

Board of Governors of the Federal Reserve System, May 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12544 Filed 5–28–09; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of April 28 and 29, 2009

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on April 28 and 29, 2009.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range of 0 to ¼ percent. The Committee directs the Desk to purchase GSE debt GSE–guaranteed MBS, and longer–term Treasury securities during the intermeeting period with the aim of providing support to private credit markets and economic activity. The timing and pace of these purchases should depend on conditions in the markets for such securities and on a broader assessment of private credit market conditions. The Committee anticipates that the combination of outright purchases and various liquidity facilities outstanding will cause the size of the Federal Reserve's balance sheet to expand significantly in coming months. The Desk is expected to purchase up to $200 billion in housing–related GSE debt by the end of this year. The Desk is expected to purchase at least $500 billion in GSE–guaranteed MBS by the end of the second quarter of this year and is expected to purchase up to $1.25 trillion of these securities by the end of this year. The Committee also directs the Desk to purchase longer–term Treasury securities during the intermeeting period. Over the next six months, the Desk is expected to purchase up to $300 billion of longer–term Treasury securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, May 21, 2009.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E9–12478 Filed 5–28–09; 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 June 25, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, Kansas; to acquire up to 51 percent of the voting shares of Brotherhood Bancshares, Inc., and thereby indirectly acquire voting shares of The Brotherhood Bank & Trust Company, both in Kansas City, Kansas.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Franklin Resources, Inc., San Mateo, California; to acquire 9.90 percent of the voting shares of Black River BancVenture, Inc., Memphis, Tennessee, and thereby indirectly acquire voting shares of Allegiance Bank of North America, Bala Cynwyd, Pennsylvania; Bay Commercial Bank, Walnut Creek, California; Community Shores Bank, Muskegon, Michigan; Cornerstone Bank, Moorestown, New Jersey; Lakeside Community Bank, Sterling Heights, Michigan; and Quaint

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on April 28 and 29, 2009, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Oak Bank, Southhampton, Pennsylvania.

Board of Governors of the Federal Reserve System, May 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E9–12545 Filed 5–28–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 18, 2009. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, June 16, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 12:30 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

• *The Community Reinvestment Act*

Members will discuss the future of the Community Reinvestment Act, including possible changes in light of developments in the financial services industry.

• *Credit scoring*

Members will discuss various issues related to credit scoring, including the impact of changes in the credit environment on scores.

• *Neighborhood and community stabilization*

Members will discuss strategies and challenges in the effort to stabilize communities affected by foreclosures, including the implementation of the Neighborhood Stabilization Program.

• *Foreclosure prevention*

Members will discuss loss-mitigation efforts, the performance of modified mortgages, and other issues related to foreclosures.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake, 202–452–6470.

Board of Governors of the Federal Reserve System, May 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12516 Filed 5–28–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 25, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. The Bancorp, Inc., Wilmington, Delaware; to acquire American Home Bank, Chicago, Illinois, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12543 Filed 5–28–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Federal Acquisition Regulation; Information Collection; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation, Regulatory Secretariat (VPR) will be submitting to the Office of Management and Budget (OMB) a request to reinstate a previously approved information collection requirement concerning Qualification Requirements.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 28, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information,

including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Millisa Gary, Procurement Analyst, Contract Policy Division, GSA, (202) 501–0699.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Respondents: 2,207.
Responses Per Respondent: 100.
Annual Responses: 220,700.
Hours Per Response: .25.
Total Burden Hours: 55,175.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC, 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: May 22, 2009.

Edward Loeb,

Acting Director, Office of Acquisition Policy.

[FR Doc. E9–12476 Filed 5–28–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: ''Evaluate the Advancing Systems Improvements to Support Targets for Healthy People 2010 (ASIST2010) Program''—OMB No. 0990-NEW-Office on Women's Health.

Abstract: The Office on Women's Health is collecting data from 13 funded grantees and clients participating in ASIST2010, a three-year, cooperative agreement program. ASIST2010 uses a public health systems approach to improve performance on two or more of seven Healthy People 2010 (HP 2010) objectives that target women and/or men in six focus areas—cancer, diabetes, heart disease and stroke, access to quality health services, educational and community-based programs, nutrition and overweight, and physical activity and fitness. The goals of the ASIST2010 program are to: (1) Provide additional support to existing public health systems/collaborative partnerships to enable them to add a gender focus to HP 2010 objectives that track the health status of women and/or men, to help improve gender outcome in the targeted population and/or geographic area; (2) improve surveillance/information systems that allow tracking of program progress on HP 2010 objectives at the grantee level; and (3) develop and implement a plan to sustain the program after OWH funding ends. The sites participating in the ASIST2010 program represent four academic medical centers, three community-based organizations, two hospitals, two state health departments, one county health department, and one foundation.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hours)
Grantee Staff	Grantee Telephone Interview Protocol (Round 1).				
	Site Visit Advance Letter	65	3	1	195
	Site Visit Protocol.				
	Grantee Telephone Interview Protocol (Round 2).				
Partner Organization Staff (In-person interviews).	Site Visit Protocol	52	1	1	52
Consumers (In-person interviews)	Site Visit Protocol	18	1	1	18
Consumers (Focus groups)	Focus Group Advance Letter.				
	Focus Group Flyer	40	1	1.5	60
	Consumer Focus Group Discussion Guide.				

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hours)
Comparison Organization Staff (Telephone Interviews).	Advance Letter for Comparison Organizations. Comparison Organization Interview Protocol.	10	1	1	10
TOTAL					335

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–12491 Filed 5–28–09; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0269]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Complaint Forms for Discrimination; Health Information Privacy Complaints OMB No. 0990–0269–Extension–Office of Civil Rights.

Abstract: The Office for Civil Rights is seeking approval for a 3 year clearance on a previous collection. Individuals may file written complaints with the Office for Civil Rights when they believe they have been discriminated against by programs or entities that receive Federal financial assistance from the Health and Human Service or if they believe that their right to the privacy of protected health information has been violated.

Annual Number of Respondents: Frequency of submission is record keeping and reporting on occasion.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Civil Rights Complaint Form	Individuals or households, Not-for-profit institutions.	3037	1	45/60	2278
Health Information Privacy Complaint Form.	Individuals or households, Not-for-profit institutions.	8944	1	45/60	6708
Total					8986

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–12492 Filed 5–28–09; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics

AGENCY: Department of Health and Human Services, Office of Public Health and Science, The President's Council on Bioethics.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its thirty-seventh and final meeting. The full agenda will be posted on the Council's Web site at *http://www.bioethics.gov* prior to the meeting. Publications issued by the Council to date include: Human Cloning and Human Dignity: An Ethical Inquiry (July 2002); Beyond Therapy: Biotechnology and the Pursuit of Happiness (October 2003); Being Human: Readings from the President's Council on Bioethics (December 2003); Monitoring Stem Cell Research (January 2004); Reproduction and Responsibility: The Regulation of New Biotechnologies (March 2004); Alternative Sources of Human Pluripotent Stem Cells: A White Paper (May 2005); Taking Care: Ethical Caregiving in Our Aging Society (September 2005); Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics (March 2008); The Changing Moral Focus of Newborn Screening: An Ethical Analysis by The President's Council on Bioethics (December 2008); and Controversies in the Determination of Death: A White Paper by The President's Council on Bioethics (December 2008). Reports are forthcoming on organ transplantation, health care reform, and the future of national bioethics commissions.

DATES: The meeting will take place Thursday, June 25, 2009, from 9 a.m. to 3 p.m., ET; and Friday, June 26, 2009, from 9 a.m. to 11:45 a.m., ET.

ADDRESSES: The Ritz-Carlton, Washington, DC, 1150 22nd Street, NW., Washington, DC 20037. Phone 202–835–0500.

FOR FURTHER INFORMATION CONTACT: Ms. Diane M. Gianelli, Director of Communications, The President's Council on Bioethics, 1425 New York Avenue, NW., Suite C100, Washington, DC 20005. Telephone: 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted at *http://www.bioethics.gov.* The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:30 a.m., on Friday, June 26. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane M. Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of her contact addresses given above.

Dated: May 18, 2009.

F. Daniel Davis,

Executive Director, The President's Council on Bioethics.

[FR Doc. E9–12538 Filed 5–28–09; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0215]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information provisions of the final rule, ''Beverages: Bottled Water,'' published elsewhere in this issue of the **Federal Register**, which requires both domestic and foreign bottled water manufacturers that sell bottled water in the United States to maintain records of *Escherichia coli* testing and corrective measures, in addition to existing recordkeeping requirements.

DATES: Submit written or electronic comments on the collection of information by July 28, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

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 requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water—21 CFR 129.35(a)(3)(i), 129.80(g), and 129.80(h)

FDA has amended its bottled water regulations in parts 129 and 165 (21 CFR parts 129 and 165) by requiring that if any coliform organisms are detected in weekly total coliform testing of finished bottled water, follow-up testing must be conducted to determine whether any of the coliform organisms are *E. coli*. FDA also amended the adulteration provision of the bottled water standard (§ 165.110(d)) to indicate that finished product that tests positive for *E. coli* will be deemed adulterated under section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(3)). In addition, FDA amended the Current Good Manufacturing Practices (CGMP) regulations for bottled water in part 129 by requiring that source water from other than a public water system (PWS) be tested at least weekly for total coliform. If any coliform organisms are detected in the source water, the bottled water manufacturers are required to determine whether any of the coliform organisms are *E. coli*. Source water found to contain *E. coli* is not considered water of a safe, sanitary quality and would be unsuitable for bottled water production. Before a bottler may use source water from a source that has tested positive for *E. coli*, a bottler must take appropriate measures to rectify or otherwise eliminate the cause of the contamination. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site are tested and found to be *E. coli* negative.

Description of Respondents: The respondents to this proposed information collection are domestic and foreign bottled water manufacturers that sell bottled water in the United States.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
§§ 129.35(a)(3)(i) and 129.80(h)	319 (bottlers subject to source water and finished product testing)	6	1,914	0.08	153
§§ 129.35(a)(3)(i) and 129.80(h)	2.5 (bottlers conducting secondary testing of source water)	5	12	0.08	1
§§ 129.35(a)(3)(i) and 129.80(h)	2.5 (bottlers rectifying contamination)	3	7.5	0.25	2
§ 129.80(g) and (h)	95 (bottlers testing finished product only)	3	285	0.08	23
Total Annual Burden					179

[1]There are no capital costs or operating costs associated with this collection of information.

The current CGMP regulations already reflect the time and associated recordkeeping costs for those bottlers that are required to conduct microbiological testing of their source water, as well as total coliform testing of their finished bottled water products. FDA therefore concludes that any additional burden and costs in recordkeeping based on the new testing requirements for source and finished bottled water are negligible. FDA estimates that the labor burden of keeping records of each test is about 5 minutes per test. FDA also requires follow-up testing of source water and finished bottled water products for *E. coli* when total coliform positives occur. FDA expects that 319 bottlers that use sources other than PWSs may find a total coliform positive sample about 3 times per year in source testing and about 3 times in finished product testing, for a total of 153 hours of recordkeeping. In addition to the 319 bottlers, about 95 bottlers that use PWSs may find a total coliform positive sample about 3 times per year in finished product testing, for a total of 23 hours of recordkeeping. Upon finding a total coliform positive sample, bottlers will then have to conduct a follow-up test for *E. coli*.

FDA expects that recordkeeping for the follow-up test for *E. coli* will also take about 5 minutes per test. As shown in table 1 of this document, FDA expects that 2.5 bottlers per year will have to carry out the additional *E. coli* testing, with a burden of 1 hour. These bottlers will also have to keep records about rectifying the source contamination, for a burden of 2 hours. For all expected total coliform testing, *E. coli* testing, and source rectification, FDA estimates a total burden of 179 hours. FDA bases its estimate on its experience with the current CGMP regulations.

Dated: May 18, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12493 Filed 5–26–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10078]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Matching Grants to States for the Operation of High Risk Pools; *Use:* CMS is requiring this information as a condition of eligibility for grants that were authorized in the Trade Act of 2002, the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. The information is necessary to determine if a state applicant meets the necessary eligibility criteria for a grant as required by law. The respondents will be States that have a high risk pool as defined in sections 2741, 2744, or 2745 of the Public Health Service Act. The grants will provide funds to States that incur losses in the operation of high risk pools. High risk pools are set up by States to provide health insurance to individuals that cannot obtain health insurance in the private market because of a history of illness; *Form Numbers:* CMS–10078 (OMB#: 0938–0887); *Frequency:* Recordkeeping, Reporting—Occasionally; Affected Public: State, Local and Tribal Governments; *Number of Respondents:* 31; *Total Annual Responses:* 31; *Total Annual Hours:* 1,240. (For policy questions regarding this collection contact Paul Scholz at 410–786–6178. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *July 28, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS–10078), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 21, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–12530 Filed 5–28–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–643 and CMS–359/360]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospice Survey and Deficiencies Report; *Use:* In order to participate in the Medicare program, a hospice must meet certain Federal health and safety conditions of participation. This form is used by State surveyors to record data about a hospice's compliance with these conditions of participation in order to initiate the certification or recertification process. *Form Number:* CMS–643 (OMB#: 0938–0379); *Frequency:* Reporting—Yearly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 3377; *Total Annual Responses:* 1130; *Total Annual Hours:* 1130. (For policy questions regarding this collection contact Kim Roche at 410–786–3524. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements at 42 CFR 485.54 through 485.66; *Use:* In order to participate in the Medicare program as a CORF, providers must meet Federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to CMS. *Form Number:* CMS–359/360/R–55 (OMB#: 0938–0267); *Frequency:* Reporting—Occasionally; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 476; *Total Annual Responses:* 60; *Total Annual Hours:* 223,285. (For policy questions regarding this collection contact Georgia Johnson at 410–786–6859. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 29, 2009.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: May 21, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–12529 Filed 5–28–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: June 18, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892–7924, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12583 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 18, 2009.

Closed: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037.

Open: 1 p.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037.

Contact Person: Andrew P Mariani, Ph.D., Executive Secretary, National Advisory Eye Council, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, (301) 451–2020, *apm@nei.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 21 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12564 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Services Subcommittee is to review the current state of services and supports for individuals with Autism Spectrum Disorder (ASD) and their families in order to improve these services. The Subcommittee meeting will be conducted as a telephone conference call with presentations on the Web. This meeting is open for the public to call in to listen and to access the Web presentations.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Services Subcommittee.

Date: June 16, 2009.

Time: 2 p.m. to 5 p.m. Eastern Time

Agenda: To discuss autism services and supports activities; special speakers to present the CDC *Learn The Signs. Act Early.* Program and the HRSA Combating Autism Act Initiative.

Place: In Person: The National Institutes of Health, Executive Plaza North, 6130 Executive Boulevard, Conference Room H, Main Level, Rockville, MD 20850.

Webinar: *http://www1.gotomeeting.com/register/679351441.* To Access the Conference Call: Dial: 888–455–2920, Access code: 8287017.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Rockville, MD 20850, 301–443–6040, *IACCPublicInquiries@mail.nih.gov.*

Please Note:

The meeting will be open to the public through a conference call phone number and a web presentation tool on the Internet. Individuals who participate using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 10 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If members of the public experience any technical problems with the web presentation tool, they are encouraged to contact GoToWebinar at (800) 263–6317 or to send a written comment to the technical staff through the Web presentation tool.

To access the Web presentation tool on the Internet the following computer capabilities are required:

(A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later;

(B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista;

(C) Stable 56k, cable modem, ISDN, DSL or better Internet connection;

(D) Minimum of Pentium 400 with 256 MB of RAM (Recommended);

(E) Java Virtual Machine enabled (Recommended).

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12568 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee (IACC) Subcommittee for Planning the Annual Strategic Plan Updating Process.

The purpose of the Subcommittee for Planning the Annual Strategic Plan Updating Process is to discuss a strategy for annually updating the Strategic Plan for Autism Spectrum Disorder Research. The Subcommittee meeting will be conducted in person and as a telephone conference call with presentations on the Web. This meeting is open for the public to call in to listen and to access the Web presentations, or to attend in person.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Subcommittee for Planning the Annual Strategic Plan Updating Process.

Date: June 16, 2009.

Time: 10 a.m. to 1 p.m. Eastern Time.

Agenda: To discuss a strategy for annually updating the IACC Strategic Plan for Autism Spectrum Disorder Research.

Place:

In Person: The National Institutes of Health, Executive Plaza North, 6130 Executive Boulevard, Conference Room H, Main Level, Rockville, MD 20850.

Webinar: *https://www1.gotomeeting.com/register/241818848.* To Access the Conference Call: Dial: 888–455–2920. Access code: 3857872.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Rockville, MD 20850. 301–443–6040. *IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public through a conference call phone number and a Web presentation tool on the Internet. Individuals who participate using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 10 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If members of the public experience any technical problems with the Web presentation tool, they are encouraged to contact GoToWebinar at (800) 263–6317 or to send a written comment to the technical staff through the Web presentation tool.

To access the Web presentation tool on the Internet the following computer capabilities are required:

(A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later;

(B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista;

(C) Stable 56k, cable modem, ISDN, DSL or better Internet connection;

(D) Minimum of Pentium 400 with 256 MB of RAM (Recommended);

(E) Java Virtual Machine enabled (Recommended).

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12569 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: June 18–19, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Charles Joyce, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12581 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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 Mental Health Special Emphasis Panel; ARRA CNTRICS–Competitive Supplement.

Date: June 16, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Allan F. Mirsky, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Rm. 6157, MSC 9609, Bethesda, MD 20892–9609, 301–496–2551, *afmirsky@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12579 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 1, 2009, 8 a.m. to June 2, 2009, 5 p.m., The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC, 20037 which was published in the **Federal Register** on May 14, 2009, 74 FR 22755–22757.

The meeting will be held June 2, 2009 to June 3, 2009. The meeting time and location remain the same. The meeting is closed to the public.

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12580 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; IHD ARRA Competive Revision.

Date: June 5, 2009.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Ultrasound Shared Instrumentation.

Date: June 9, 2009.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Rosslyn, 1900 North Fort Myer Drive, Arlington, VA 22209.

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12578 Filed 5–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–43]

Indian Housing Block Grant Information Collection

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.

Housing, low and moderate income housing, housing and community development, NAHASDA, Native American housing, Indians. The Native American Housing Assistance and Self Determination Act (NAHASDA) requires recipients (tribes and tribally designated housing entities) to submit specific information that is necessary for the implementation of low income housing programs using Indian Housing Block Grant funds (HBG). Recipients of IHBG funds submit Indian Housing Plans, Annual Performance Reports, Federal Cash Transactions Reports, and formula response and challenge forms.

DATES: *Comments Due Date: June 29, 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 (2577–0218) 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: Indian Housing Block Grant Information Collection.

OMB Approval Number: 2577–0218.

Form Numbers: HUD–52735, HUD–52735–AS, HUD–272–1, HUD–4117, and HUD–411.9.

Description of the Need for the Information and its Proposed Use: Housing, low and moderate income housing, housing and community development, NAHASDA, Native American housing, Indians. The Native American Housing Assistance and Self Determination Act (NAHASDA) requires recipients (tribes and tribally designated housing entities) to submit specific information that is necessary for the implementation of low income housing programs using Indian Housing Block Grant funds (HBG). Recipients of IHBG funds submit Indian Housing Plans, Annual Performance Reports, Federal Cash Transactions Reports, and formula response and challenge forms.

Frequency of Submission: On occasion, quarterly, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	579	4.81		33.44		93,308

Total Estimated Burden Hours: 93,308.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12481 Filed 5–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–44]

Screening and Eviction for Drug Abuse and Other Criminal Activity

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 information and collection requirements consist of PHA screening requirements to obtain criminal conviction records from law enforcement agencies to prevent admission of criminals into the public housing and Section 8 programs and to assist in lease enforcement and eviction of those individuals in the public housing and Section 8 programs who engage in criminal activity.

DATES: *Comments Due Date: June 29, 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 (2577–0232) 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 affected 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: Screening and Eviction for Drug Abuse and Other Criminal Activity.

OMB Approval Number: 2577–0232.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

The information and collection requirements consist of PHA screening requirements to obtain criminal conviction records from law enforcement agencies to prevent admission of criminals into the public housing and Section 8 programs and to assist in lease enforcement and eviction of those individuals in the public housing and Section 8 programs who engage in criminal activity.

Frequency of Submission: Other, admissions/retention.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3151	53.15		4.32		724,207

Total Estimated Burden Hours: 724,207.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12479 Filed 5–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–41]

Requirements for Lead-Based Paint Hazards in Federally Owned Residential Properties and Housing Receiving Federal Assistance

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.

Rule requires giving lead poisoning prevention pamphlet to tenants and purchasers, notifying occupants on hazard evaluation and reduction results, reporting if a child with high blood lead level lives in unit, record keeping and reporting to funding office.

DATES: *Comments Due Date:* June 29, 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 (2539–0009) 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 affected 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: Requirements for Lead-Based Paint Hazards in Federally Owned Residential Properties and Housing Receiving Federal Assistance.

OMB Approval Number: 2539–0009.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

Rule requires giving lead poisoning prevention pamphlet to tenants and purchasers, notifying occupants on hazard evaluation and reduction results, reporting if a child with high blood lead level lives in unit, record keeping and reporting to funding office.

Frequency of Submission: On occasion, quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	63,637	23.16		0.113		167,744

Total Estimated Burden Hours: 167,744.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12486 Filed 5–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–40]

Historically Black Colleges and Universities (HBCU)

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.

Grants to assist Hispanic-serving institutions expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing and economic development.

DATES: *Comments Due Date: June 29, 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 (2528–0198) 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: Historically Black Colleges and Universities (HBCU).

OMB Approval Number: 2528–0198.

Form Numbers: SF–424, SF–424–Supplement, HUD–424–CB, SFLLL, HUD–27300, HUD–2880, HUD–2991, HUD–2990, HUD–2993, HUD–2994, HUD–2994–A, HUD–40077, HUD–96010, and HUD–96011.

Description of the Need for the Information and its Proposed Use: Grants to assist Hispanic-serving institutions expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing and economic development.

Frequency of Submission: Semi-annually, Other Final Report.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	40	2.75		24.8		2,735

Total Estimated Burden Hours: 2,735.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *May 21, 2009.*

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12485 Filed 5–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–42]

Public Housing Agency (PHA) Lease and Grievance Requirements

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 public housing lease and grievance procedures are a recordkeeping requirement on the part of public housing agencies (PHAs) as they are required to enter into and maintain lease agreements for each individual or family that occupies a public housing unit. Also, both PHAs and tenants are required to follow the protocols set forth in the grievance procedures for both an informal and formal grievance hearing.

DATES: Comments Due Date: June 29, 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 (2577–0006) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Lease and Grievance Requirements.

OMB Approval Number: 2577–0006.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The public housing lease and grievance procedures are a recordkeeping requirement on the part of public housing agencies (PHAs) as they are required to enter into and maintain lease agreements for each individual or family that occupies a public housing unit. Also, both PHAs and tenants are required to follow the protocols set forth in the grievance procedures for both an informal and formal grievance hearing.

Frequency of Submission: Other, Admission to the program, annual reexamination of income.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3151	1		1800		5,671,800

Total Estimated Burden Hours: 5,671,800.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12482 Filed 5–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–20]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: May 29, 2009.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 21, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–12338 Filed 5–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5325–N–01]

Waiver of Certain Requirements in the Competitive and Noncompetitive Native American Housing Block Grant and the Indian Community Development Block Grant Programs Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice implements actions to facilitate the expedited award and use of economic stimulus funds made available under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, approved February 17, 2009) (Recovery Act) for Native Americans. Accordingly, this notice identifies and advises the public of HUD statutes and regulations governing HUD's Native American Housing Block Grant (NAHBG) program, also known as the Indian Housing Block Grant (IHBG) program, and the Indian Community Development Block Grant (ICDBG) program that have been waived or temporarily suspended or deferred. These waivers are authorized in order to facilitate the expedited delivery and use of Federal Recovery Act funds for NAHBG and ICDBG housing and community development initiatives that are two of several components authorized by the Recovery Act to help stimulate the economy and alleviate the effects of a national recession. These waivers apply only to assistance appropriated by the Recovery Act, both formula and competitive, and do not apply to fiscal year appropriations for the IHBG and ICDBG programs under the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009). Tribes, Tribal organizations, and Tribally designated housing entities (TDHEs) that administer NAHBG and ICDBG programs should review this notice to determine which program requirements if waived, will ensure that Recovery Act funds can be awarded quickly and efficiently to meet the objectives of the Recovery Act. The waivers listed in this notice are applicable only to Recovery Act funds and will remain in effect until September 30, 2012. Tribes, Tribal organizations, and TDHEs awarded Recovery Act funds for NAHBG or ICDBG activities have been granted waiver relief from statutes or regulations identified in this Notice.

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, Department of Housing and Urban Development, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone number (303) 675–1600 ext. 1625. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Recovery Act was passed in recognition of the need to quickly stimulate the American economy in light of the adverse events occurring in the financial and housing markets over the preceding months. The stated goals of the Act are to: (1) Preserve and create jobs and promote economic recovery; (2) assist those most impacted by the recession; (3) provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and (5) stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases. The Act specifies that Federal departments and agencies shall manage and expend the funds made available in the Act in a manner that commences expenditures and activities as quickly as possible consistent with prudent management.

HUD's Office of Public and Indian Housing (PIH) examined the statute and regulations governing the NAHBG and ICDBG programs and recommended waiver or temporary suspension or deferral of the statutes and regulations that PIH believes could impede Tribes, Tribal organizations, or TDHEs in their efforts to expeditiously implement Recovery Act projects and activities. Recipients of NAHBG and ICDBG Recovery Act funds may defer compliance with the requirements listed in this notice for a period of 36 months under the notification process described in this notice.

For several of the regulations listed in this notice for which a waiver was granted, HUD did not waive the requirements entirely but deferred compliance until such time as compliance may be feasible. HUD does not want the time and resources of Tribes, Tribal organizations, and TDHEs diverted by requirements that are important but can be deferred or waived to ensure Recovery Act funds are awarded and placed under contract, in order to generate jobs and economic activity. As the economic recovery period proceeds, HUD may identify other statutory or regulatory waivers for which waiver is needed or determine that other alternative requirements may be necessary to assist with expeditious use of Recovery Act funds. Any additional HUD waivers or other alternative requirements will be announced by direct notice to Tribes and TDHEs and by **Federal Register** publication. If Indian Tribes and TDHEs identify other regulations that they believe should be waived, they should seek a waiver by submitting a waiver request to their Area Office of Native American Programs.

II. Authority To Grant Waivers

Generally, waivers of HUD regulations are handled on a case-by-case basis. The Recovery Act provided HUD with separate waiver authority. For funds appropriated for the NAHBG program, the Recovery Act authorizes HUD to waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary for the use of these funds (except requirements related to fair housing, non-discrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds. As for funds appropriated for the ICDBG program, the Recovery Act authorizes HUD to waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by HUD or the use by a recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such a waiver is necessary to expedite or facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute.

III. Waivers

The following statutory and regulatory waivers have been granted for recipients of NAHBG and ICDBG Recovery Act funds.

A. Statutory Waivers

Native American Housing Block Grant

1. *Indian Housing Plan (IHP) Submission Requirement.* Section 101(b)(1) of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) states that the Secretary may make a grant under the Act if an Indian Housing Plan (IHP) is submitted and determined to comply with the requirements of section 102 of the Act. Section 101(b)(2) provides the Secretary with waiver authority for a period of not more than 90 days. Under the Recovery Act, NAHBG formula funds will be provided as an amendment to the FY 2008 IHP as this is the fastest most efficient way to allocate Recovery Act funds. Sections 101(b)(1) and (2) are waived for any Tribe or TDHE that did not submit an IHP in FY 2008 and did not receive funding in FY 2008 under NAHASDA. A Tribe or TDHE that did not receive IHBG funds in FY 2008 need only submit an IHP amendment in order to receive Recovery Act funds. This waiver will ensure that Recovery Act funds are provided to all eligible applicants in an expedited manner.

2. *Local Cooperation Agreement.* Section 101(c) states that grants provided under NAHASDA may not be used for rental or lease-purchase homeownership units that are owned by the recipient unless the governing body of the locality within which the property that is subject to assistance is or will enter into an agreement with the recipient for the Tribe providing for local cooperation. Section 101(c) states that this provision may be waived by the Secretary if the recipient has made a good faith effort to fulfill the requirements of this Act and agree to make payments in lieu of taxes to the appropriate taxing authority. This Notice will enable Tribes that have made a good faith effort to fulfill the requirements of the Act to receive an expedited waiver so that they can develop projects quickly in their Indian area.

B. Regulatory Waivers

Native American Housing Block Grant

1. *24 CFR 1000.156 and 1000.158; Total Development Cost (TDC) Limits.* The current regulation states that affordable housing developed, acquired, or assisted under the IHBG program must be of moderate design. TDC limits are published annually to provide recipients with affordable housing cost standards. These standards can be exceeded by 10% with Area Office of Native American Program (ONAP) approval and can be exceeded further if Headquarters approval is obtained. Justification is required to be submitted by the Tribe to justify an increase in the TDC of a unit or project. A waiver of this provision is provided to allow Tribes to exceed the current TDC maximum by 20% without HUD review or approval if the Tribe maintains documentation that indicates that housing will be for low-income families and the design, size, and amenities are moderate and comparable to housing in the area. The regulatory requirements are also waived to permit the current TDC limits to be used for both single-family and multi-family housing.

2. *24 CFR 1000.232; Tribal Certification Requirement for IHP Amendments.* The IHBG regulation at 24 CFR 1000.232 requires that a Tribal certification must accompany an IHP amendment when submitted by a TDHE to HUD. In many instances, a TDHE submits an IHP for several Tribes. At the time of the initial IHP submittal, Tribes certified that the TDHE is authorized to submit an IHP on its behalf. This waiver permits the TDHE to submit an amendment to an existing IHP without obtaining another certification from the Tribe. The request to waive this requirement is to expedite the IHP approval process and ensure that funds are provided to the Tribe as quickly as possible so that the timelines in the Recovery Act for obligation and expenditure of funds can be met.

Indian Community Development Block Grant

1. *24 CFR 1003.302(a); Project Specific Threshold Requirements—Housing Rehabilitation Standards.* The ICDBG regulation at 24 CFR 1003.302(a) requires that ICDBG applicants submitting applications for housing rehabilitation projects adopt, by Tribal resolution, rehabilitation standards and policies prior to submitting an application. This waiver permits those Tribal applicants who do not have standards and policies in place to submit an application and adopt such after the award. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a Notice of Funding Availability (NOFA). The requirement that project funds can be used to rehabilitate units where the homeowner's payments are current or the homeowner is current on an approved repayment period is not being waived. Area ONAP Administrators can still approve exceptions to this requirement on a case-by-case basis in accordance with the current regulatory requirement.

2. *24 CFR 1003.302(b); Project Specific Threshold Requirements—New Housing Construction Standards.* The ICDBG regulation at 24 CFR 1003.302(b) requires that ICDBG applicants submitting applications for new housing construction projects adopt, by current Tribal resolution, construction standards prior to submitting an application. This waiver permits those Tribal applicants who do not have construction standards in place to submit an application and adopt such after the award. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a NOFA. The requirement that new construction can only be implemented through a non-profit organization may not be waived.

3. *24 CFR 1003.302(b); Project Specific Threshold Requirements—Available Housing Stock.* In addition, 24 CFR 1003.302 (b) also provides that in order to use ICDBG funds to build new housing, a Tribe must demonstrate that: (1) No other housing is available in the immediate reservation area; (2) no other sources can meet the needs of the household; (3) rehabilitation of the unit occupied by the household(s) to be assisted is not economically feasible; (4) the household(s) is in overcrowded conditions; or (5) the household has no current residence. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a NOFA. The requirement that new construction can only be implemented through a non-profit organization may not be waived.

4. *24 CFR 1003.302(c); Project Specific Threshold Requirements—Economic Development Analysis.* The ICDBG regulation at 24 CFR1003.302(c) requires that ICDBG applicants submitting applications for economic development projects provide an analysis which, among other things, shows public benefit commensurate with the ICDBG assistance requested will result from the assisted project. Although the analysis requests several components, this waiver is only applicable to the following components: showing public benefit commensurate to ICDBG assistance; financial support from non-Federal sources committed prior to disbursement of Federal funds;

and not more than a reasonable rate of return on investment is provided to the owner. This waiver permits Tribal applicants to submit an application without these components and adopt such after the award. If awarded a grant under the Recovery Act program, submission of this documentation will become a grant condition. This waiver will ensure that an application for Recovery Act funds can be submitted promptly in response to a NOFA. All other analysis components remain required and must be submitted with the application and may not be waived. The components that must be submitted include the following: any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; grant funds used for the project will be disbursed on a pro rate basis with amounts from other sources; and establishing the project is financially feasible and that it has a reasonable chance of success.

5. *24 CFR 1003.303; Project Rating.* The ICDBG regulation at 24 CFR 1003.303 requires each project in an ICDBG application to meet project threshold requirements and then be scored based on five specific rating factors. The rating factors are capacity, need/extent of the problem, soundness of the approach, leveraging of resources, and comprehensiveness and coordination. Recovery Act funds under the ICDBG program can only be awarded to recipients who received ICDBG funding in FY 2008. These recipients have already demonstrated the capacity to administer the grants. In recognition of strict funding obligations deadlines in the Recovery Act and the specific Recovery Act provisions for awarding funds, this section is waived so that the NOFA can be drafted to delete the applicant capacity factor in the ICDBG NOFA and include a new factor to address the requirements of the Recovery Act.

6. *24 CFR 1003.604; Citizen Participation Requirements.* The ICDBG regulations at 24 1003.604(a)(2) require applicants to consult with residents prior to submitting their funding applications. The consultation requirements have the potential to delay the ability of ICDBG recipients to expeditiously facilitate Recovery Act funds for housing and community development needs. Accordingly, this section is waived so that the Tribe will not have to hold one or more meetings to obtain the views of residents on community development and housing needs. Tribes will be required to meet the citizen participation requirements by publishing or posting information on their plans to use Recovery Act funds and accepting comments. However, comments will not have to be submitted prior to the application deadline date. The Tribe will be required to certify in its application that information has been published or posted for residents of the community in order to meet the citizen participation requirement.

Dated: May 4, 2009.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E9–12483 Filed 5–28–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0029).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Reclamation (Reclamation, we) has forwarded the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Rural Water Supply Act, OMB Control Number: 1006–0029. Title 43 CFR part 404 requires entities interested in participating in the Rural Water Supply Program (Rural Water Program) to submit information to allow Reclamation to evaluate and prioritize requests for financial or technical assistance.

DATES: OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comments must be received on or before June 29, 2009 to assure maximum consideration.

ADDRESSES: You may send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806 or e-mail to *OIRA_DOCKET@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84–52000, PO Box 25007, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Avra Morgan at: (303) 445–2906.

SUPPLEMENTARY INFORMATION:

Title: Reclamation Rural Water Supply Program, 43 CFR part 404.

OMB Control Number: 1006–0029.

Abstract: The purpose of the Rural Water Program is to provide assistance to small communities of 50,000 inhabitants or less, including tribes and tribal organizations, to plan the design and construction of projects to serve rural areas with industrial, municipal, and residential water. Specifically, Reclamation is authorized to provide financial and technical assistance to conduct appraisal investigations and feasibility studies for rural water supply projects. Reclamation's regulations (43 CFR part 404) establish criteria governing how the program will be implemented, including eligibility and prioritization criteria, and criteria to evaluate appraisal and feasibility studies.

Entities interested in participating in the Rural Water Program will be requested to submit information regarding proposed appraisal investigations and feasibility studies, to allow Reclamation to evaluate and prioritize requests for financial or technical assistance under the program. Reclamation will apply the program criteria to the information provided to determine whether the entity seeking assistance is eligible, whether the project is eligible for assistance, and to what extent the project meets Reclamation's prioritization criteria. Requests for assistance under the Rural Water Program will be made on a voluntary basis. There is no form associated with this information collection.

There are three different types of assistance that a project sponsor can request under the Rural Water Program, each of which requires different information to be submitted, as follows:

(1) *Review of a Completed Study.* To request Reclamation to review a completed appraisal investigation or feasibility study—which was not completed with assistance under the Rural Water Program, the entity making the request (the project sponsor) must submit a cover letter requesting Reclamation to commence the review. The cover letter must address the eligibility criteria set forth in §§ 404.6 and 404.7 of the regulations, and the prioritization criteria under § 404.13.

(2) *Assistance to Conduct an Appraisal Investigation.* To request technical or financial assistance to conduct an appraisal investigation, the project sponsor must submit a statement of interest in response to the program announcement, as explained in § 404.14. Reclamation will post a program announcement on www.grants.gov one time annually to provide notice to the public of the

opportunity to request assistance under the Rural Water Program. No form is required to be filled out in order to submit a statement of interest. The statement of interest will include information regarding the eligibility of the project sponsor to participate in the program, whether the proposed project meets the program eligibility requirements, and the extent to which the proposed project meets the prioritization criteria.

(3) *Assistance to Conduct a Feasibility Study.* To request technical or financial assistance to conduct a feasibility study, the project sponsor must have already completed an appraisal investigation. Since a statement of interest will have already been submitted, project sponsors seeking to conduct a feasibility study may simply complete a full proposal without having to complete another statement of interest. No form is required to be filled out in order to submit a full proposal. The full proposal will be used by Reclamation to determine whether the project sponsor is eligible to participate in the program, whether the proposed project meets the program eligibility requirements, the extent to which the proposed project meets the prioritization criteria, and to evaluate the proposal in general to determine whether it is reasonable and can be successful. The content of a full proposal will be described in detail in the program announcement and will typically include a detailed scope of work for the proposed study.

Frequency: Once annually, in response to the program announcement.

Respondents: States, tribes, municipalities, water districts, and other entities created under State law with water management authority.

Estimated Annual Total Number of Potential Respondents: 185.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 56.0.

Estimated Total Annual Burden on Respondents: 2,100 hours.

Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

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. A 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (73 FR 67778, Nov. 17, 2008) in an interim final rule. No public comments were received.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Roseann Gonzales,

Director, Policy and Program Services, Bureau of Reclamation.

[FR Doc. E9–12525 Filed 5–28–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–114438; AZA–35058; L51010000 ER0000 LVRWG09G0690]

Notice of Intent To Prepare an Environmental Impact Statement and Possible Resource Management Plan Amendments for the SunZia Southwest Transmission Project in Arizona and New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM), New Mexico State Office, announces its intent to prepare an Environmental Impact Statement (EIS), and by this notice is announcing the beginning of the scoping process and soliciting input on identification of issues and proposed planning criteria in response to a right-of-way application filed by SunZia Transmission, LLC (SunZia).

DATES: Comments should be submitted no later than 45 days after publication of this Notice in the **Federal Register**. The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site (see below) at least 15 days prior to each meeting. We will provide additional opportunities for public participation upon publication of the Draft EIS, including a 90-day public comment period.

ADDRESSES: You may submit comments or resource information by any of the following methods:

Web site: http://www.blm.gov/nm/st/en/prog/more/lands_realty.html.

E-Mail: NMSunZiaProject@blm.gov.

Mail: Bureau of Land Management, New Mexico State Office, SunZia Southwest Transmission Project, P.O. Box 27115, Santa Fe, NM 87502–0115.

Courier/Hand Delivery: Bureau of Land Management, SunZia Southwest Transmission Project, 1474 Rodeo Road, Santa Fe, NM 87505.

Documents pertinent to the right-of-way application may be examined at: Bureau of Land Management New Mexico State Office, Public Room, 1474 Rodeo Road, Santa Fe, NM 87505, Telephone (505) 438–7471.

FOR FURTHER INFORMATION: For further information and/or to have your name added to the mailing list, contact Adrian Garcia, SunZia Southwest Transmission BLM Project Manager, at the New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–0115, or by e-mail at *NMSunZiaProject@blm.gov.*

SUPPLEMENTARY INFORMATION: SunZia has submitted a right-of-way application to construct, operate, and maintain two new single-circuit overhead 500 kilovolt (kV) transmission lines originating at a new substation in either Socorro County or Lincoln County in the vicinity of Bingham or Ancho, New Mexico, and terminating at the Pinal Central Substation in Pinal County near Coolidge, Arizona. The overall transmission line route would be approximately 460 miles in length, a substantial part of this length on BLM lands, and two separate transmission lines would be located on BLM, State, and private lands.

SunZia's proposal is to transport electricity generated by power generation resources, including primarily renewable resources, to western power markets and load centers. The SunZia project would enable the development of renewable energy resources, including wind, solar, and geothermal generation, by creating access to the interState power grid in the Southwest and providing increased transfer capacity. The proposed project would also increase power reliability across the southwestern United States, allow communities in southern Arizona and southern New Mexico to economically access energy generated from renewable sources, provide power

to help meet growing demand in the western United States, and enhance domestic energy security.

The Southwest Area Transmission Group—a regional transmission planning organization—identified a need for the project. Its importance is demonstrated by the abundance of proposed projects that have submitted interconnection requests to transmission owners within the proposed project area, and the potential for renewable energy sites within the SunZia project area. Additional transmission would be required to support development of potential renewable energy projects in Arizona and New Mexico. In addition, the requirement of each State to meet Renewable Portfolio Standards (RPS) and national interests in energy, demonstrate the need for the proposed project.

The proposed transmission line route and alternatives developed through the NEPA process would cross BLM lands in Arizona and New Mexico, as well as State and private lands. To the extent feasible, the proposed route would use existing transmission line corridors and designated utility corridors located on Federal land. One of the 500 kV transmission lines would be constructed and operated as an alternating current (AC) facility. SunZia may construct and operate the other proposed transmission lines as either AC or direct current (DC). The SunZia transmission lines would interconnect with planned substations along the route. Equipment additions and modifications would be required at each of the interconnecting substations. Engineering studies would determine those requirements as part of the project. A right-of-way of up to 1,000 feet in width and a lease-term of 50 years would be required to construct, operate, and maintain the transmission lines, structures and appurtenances. If constructed, the project would be in operation year-round, transporting electrical power to major substation hubs in Arizona and New Mexico. The project would have a bi-directional transmission capacity of approximately 3,000 megawatts or greater of electrical power.

The proposed project would take approximately three years to construct and would likely be constructed in phased segments with an in-service date of 2013. Specific acreages of access roads and temporary work areas would be determined through the NEPA process and project design.

In Arizona, approximately 43 miles of the proposed route would cross public land administered by the Safford and Tucson BLM Field Offices. In New Mexico, approximately 128 miles of the proposed route would cross public land administered by the BLM Las Cruces District Office and BLM Socorro Field Office. The proposed route would pass in the general vicinity of the following locations:

Arizona: Coolidge, San Manuel, Safford, Willcox, Bowie, and San Simon; and

New Mexico: Lordsburg, Deming, Hatch, Derry, Arrey, Truth or Consequences, San Antonio, Bingham, Ancho, and Carrizozo.

The BLM is the lead Federal agency for the NEPA analysis process and preparation of the EIS. Cooperating agencies identified at this time could include: The Bureau of Reclamation, the U.S. Army Corps of Engineers, the New Mexico State Land Office, and the Arizona State Land Department. Other State and local governments will be invited to participate in the process, and consultation will occur with local, State, and tribal governments.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: The potential effects of the proposed action on wildlife habitat, plants, and animals including threatened, endangered, and sensitive species, visual resources, National Historic Trails and related viewsheds; Native American traditional cultural properties and sacred places; soils/water from surface disturbing activities; local and regional socioeconomic conditions; consistency with local government land use plans; and future reclamation/mitigation from transmission line construction or location. The BLM encourages the public to send comments concerning the project as proposed, other feasible alternative locations, possible mitigation measures, and any other information relevant to the proposed action.

Authorization of this proposal may require amendments to one or more RMPs. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential RMP amendments, predicated on the findings of the EIS. If RMP amendments are necessary, the BLM will integrate the RMP process with the NEPA process for this project.

Your input is important and will be considered in the public scoping process. All comment submittals must include the commenter's name and street address. Comments including the names and addresses of the commenter will be available for public inspection at the above offices during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. Before including your address, phone number, e-mail address, or any other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

William Merhege,

Acting Deputy State Director, Lands and Resources.

[FR Doc. E9–12512 Filed 5–28–09; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Feasibility Study and Environmental Impact Statement for Everglades National Park (Park) To Evaluate Modifications to the Tamiami Trail

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), that the NPS is preparing a Feasibility Study and EIS to ''evaluate the feasibility of additional bridge length, beyond that to be constructed pursuant to the Modified Water Deliveries to Everglades National Park Project (16 U.S.C. 410r-S), including a continuous bridge, or additional bridges or some combination thereof, for the Tamiami Trail (United States Highway 41) to restore more natural water flow to Everglades National Park and Florida Bay and for the purpose of restoring habitat within the Park and the ecological connectivity between the Park and the Water Conservation Areas'' (2009 Omnibus Appropriations Act). The NPS is the lead agency on this federal action; however, the NPS has requested the United States Army Corps of Engineers (USACOE) be a cooperating agency on this effort, with the Federal Highway Administration (FHWA) providing technical assistance.

DATES: Written comments regarding the proposed project must be postmarked no later than 30 days from the publication of this Notice of Intent (NOI) in the **Federal Register**. As part of this process, public workshops will be held to solicit public input about the proposed project. The date, time, and location of the public workshops will be

announced in the newspaper Miami Herald and through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov.*

ADDRESSES: Written comments should be addressed to: National Park Service, Attention Pat Kenney, Denver Service Center, Planning Division, P.O. Box 25287, Denver, Colorado 80225–0287. Comments may also be submitted via the PEPC Web site using the links provided below. General information about the proposed project is available at the office of the Superintendent, Everglades National Park, 40001 State Road 9336, Homestead, Florida 33034. Additionally, interested persons may view the PEPC Web site: *http://parkplanning.nps.gov,* then select ''Everglades NP'' from the drop down box.

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. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dan B. Kimball Superintendent, Everglades and Dry Tortugas National Parks, 40001 SR 9336, Homestead, FL 33034 or by telephone at 305–242–7800.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* This project is authorized under the 2009 Omnibus Appropriations Act.

b. *Project Scope:* The 2009 Omnibus Appropriations Act directs the Secretary of the Interior, acting through the NPS, to immediately ''evaluate the feasibility of additional bridge length, beyond that to be constructed pursuant to the Modified Water Deliveries to Everglades National Park Project (16 U.S.C. 410r-S), including a continuous bridge, or additional bridges or some combination thereof, for the Tamiami Trail (United States Highway 41) to restore more natural water flow to Everglades National Park and Florida Bay and for the purpose of restoring habitat within the Park and the ecological connectivity between the Park and the Water Conservation Areas.''

Specific Objectives include:

- Provide for substantial increases in flows under the Tamiami Trail to Northeast Shark River Slough in the Park in order to restore the natural resources and processes in the park.
- Remove obstructions to sheet flow between Water Conservation Area 3 and the Park.
- To the extent practicable, restore ecological conditions in Park.
- Ensure compatibility with other pre-Comprehensive Everglades Restoration Plan (CERP) and future CERP projects.
- Identify seepage management requirements associated with the recommended plan.

c. *Preliminary Alternatives:* The previously examined alternatives in the 2005 Revised General Reevaluation Report will be reevaluated and modified. In addition, the environmental, engineering, real estate, and cost estimates will be revised.

d. *Issues:* The Integrated Feasibility Study/EIS will consider impacts on health and safety, aesthetics and recreation, cultural resources, socio-economic resources, hydrology, water quality, ecosystem habitat, fish and wildlife resources, threatened and endangered species, and construction costs.

e. *Scoping:* In order to develop a realistic plan, NPS will seek input from other resource and technical agencies and stakeholders, including the Miccosukee Tribe of Indians of Florida, Seminole Tribe of Florida and Seminole Tribe of Oklahoma, the South Florida Water Management District, the Florida Department of Transportation, Florida Department of Environmental Protection, State Historic Preservation Office (SHPO) and the FHWA. The final recommended plan will take into consideration the Integrated Schedule developed with the policy guidance of the South Florida Ecosystem Restoration Task Force and will be consistent with the National Academy of Sciences recommendations for Incremental Adaptive Restoration. The Park, as the project lead, will be responsible for completion of the final report, including all technical analyses and NEPA requirements. This scope may be amended by the agreement of the parties.

f. *Public Involvement:* Public scoping meetings and workshops will be held over the course of the study; the exact locations, dates, and times will be announced in public notices and local newspapers. Public meetings will be held after release of the Draft EIS; the exact locations, dates, and times will be announced in a public notice and local newspapers.

g. *Coordination:* The proposed action is in accordance with the Fish and Wildlife Coordination Act of 1958 and the Endangered Species Act of 1973. The coordinating agencies include the United States Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Florida Department of Environmental Protection, South Florida Water Management District, Miccosukee Tribe of Indians of Florida, Seminole Tribe of Florida, Seminole Tribe of Oklahoma, USACOE, and FHWA.

h. *Other Environmental Review and Consultation:* The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act, the National Historic Preservation Act, and any other applicable law.

i. *Agency Role:* As a cooperating agency, the USACOE will provide extensive information and assistance updating the environmental, engineering, real estate, and cost/benefit analyses for all alternatives.

j. *EIS Preparation:* The draft Integrated Feasibility Study/EIS is currently estimated for publication in March 2010.

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6.

Dated: May 5, 2009.

Art Frederick,

Acting Regional Director, Southeast Region, National Park Service.

[FR Doc. E9–12507 Filed 5–28–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ9120000 L12200000 AL0000 6100.241A0]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Arizona Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on June 25, 2009, at the BLM National Training Center located at 9828 North 31st Avenue in Phoenix from 8 a.m. until 4:30 p.m. Morning agenda items include: Review and approval of the March 26, 2009, meeting minutes for

RAC and Recreation Resource Advisory Council (RRAC) business; BLM State Director's update on statewide issues; Update on Solar Energy Rights-of-Way Applications, and the Arizona Renewable Resources and Transportation Information System Project; a presentation on Mapping Land Health Achievements and Non-Achievements on BLM Lands: Improving Land Management, Planning, and Reporting of Land Condition; RAC review and discussion of the 2009 RAC Annual Work Plan; questions on BLM District/Field Manager reports; and reports by the RAC working groups. A public comment period will be provided at 11:30 a.m. on June 25, 2009, for any interested publics who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the RRAC, and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The afternoon meeting agenda on June 25 will include review and discussion of the Recreation Enhancement Act (REA) Working Group Report, and one BLM fee proposal in Arizona.

The BLM Kingman Field Office is proposing to increase fees for use of its recreation facilities beginning October 1, 2009. The fee sites and proposed changes are: Burro Creek Individual Sites ($10 to $14), Burro Creek Group Site ($30 to $50), Wild Cow Springs Individual Sites ($5 to $8), Wild Cow Springs Group Site ($15 to $20), and Windy Point Individual Sites ($4 to $8). The purpose of the BLM fee increase is to continue maintenance and improve its campground facilities.

Following the BLM proposal, the RRAC will open the meeting to public comments on the fee proposal. After completing their RRAC business, the BLM RAC will reconvene to provide recommendations to the RAC Designated Federal Official on the fee proposal and discuss future RAC meetings and locations.

DATES: *Effective Date:* June 25, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

Joanie Losacco,

Acting Arizona State Director.

[FR Doc. E9–12528 Filed 5–28–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2009–N0114; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct certain activities with endangered species and/or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by June 29, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Submit your written data, comments, or requests for copies of the complete applications to the address shown in **ADDRESSES**.

Applicant: Dr. Paul D. Bienasz, New York, NY, PRT–212201

The applicant requests a permit to acquire from Coriell Cell Repositories, Camden, NJ, in interstate commerce fibroblast cell lines from lesser dwarf lemurs (*Cheirogaleus medius*) for the purpose of scientific research.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application was submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Submit your written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications to the address shown in **ADDRESSES**. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: University of Illinois Veterinary Diagnostic Laboratory, Maywood, IL, PRT–192878

The applicant requests a permit to acquire and import unlimited numbers of biological specimens of manatees (*Trichechus spp.*), dugong (*Dugong dugon*), sea otters (*Enhydra lutris*), marine otter (*Lontra felina*), walrus (*Odobenus rosmarus*), and polar bear (*Ursus maritimus*) from animals in the wild and in captivity for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding a copy of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: May 22, 2009.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E9–12490 Filed 5–28–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Establishment of Interim Final Supplementary Rules Within the South Spit Cooperative Management Area, Managed by the Arcata Field Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Interim Final Supplementary Rules with request for comments.

SUMMARY: The Bureau of Land Management (BLM) Arcata Field Office, California, is issuing interim final

supplementary rules for the South Spit Cooperative Management Area (CMA) and requesting public comment. The rules will be effective upon publication and remain in effect until the publication of final supplementary rules. The BLM has determined these interim final supplementary rules are necessary to enhance the safety of visitors, protect natural resources, and protect public health.

These rules do not propose or implement any land use limitations or restrictions other than those included within the BLM's decision records for the South Spit CMA Management Plan and associated environmental assessments, or allowed under existing law or regulation.

DATES: The interim final supplementary rules are effective May 29, 2009. We invite comments until July 28, 2009.

ADDRESSES: Submit all comments concerning the interim final supplementary rules to the Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521; or you may access the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Wick, Planning and Environmental Coordinator, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521, 707–825–2321. e-mail: *rwick@ca.blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. BLM need not consider or include in the Administrative Record for the interim rules: (a) Comments that BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than those listed above (see **ADDRESSES**).

You may also access and comment on the interim final supplementary rules at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521, during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Background

The BLM is establishing these interim final supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations. The interim final supplementary rules will be available for inspection in the Arcata Field Office, and they will be published in a newspaper of general circulation in the affected vicinity. The overall program authority for the operation of this area is found in sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740). The South Spit is located approximately 6 miles southwest of Eureka, Humboldt County, California, within the Humboldt Baseline and Meridian. These interim final supplementary rules will apply to approximately seven acres of BLM managed public lands within the South Spit CMA known as Lighthouse Ranch, and to approximately 600 acres where the State of California, through a deed of conservation easement, conveyed to the BLM an interest in and the right to manage the South Spit in all aspects of its use in perpetuity. A map of the area can be obtained by contacting the BLM Arcata Field Office (see **ADDRESSES** section) or by accessing the following Web site: *http://www.blm.gov/ca/arcata.*

BLM finds good cause to publish these supplementary rules on an interim basis, effective the date of publication, because of public safety and resource protection needs within the management area, and based on their localized impact. Visitor use is high at the South Spit CMA due to its close proximity to Eureka and Arcata, the population centers of Humboldt County. The area contains habitat for the Western Snowy Plover (*Charadrius alexandrinus nivosus*), a species listed as threatened in 1970 under the Endangered Species Act (ESA). Due to the dune habitat degradation that occurred prior to public acquisition of the area, only about 30–50 acres of nesting habitat occur on the approximately 4.5 miles of beach in the South Spit CMA. Human impacts contribute to low reproductive success of plovers in a variety of ways, including direct loss of eggs and chick mortality from pedestrians and vehicles, vandalism resulting in clutch loss, and nest abandonment from disturbance of adults tending eggs or chicks. These supplementary rules are intended to allow for certain compatible public uses while minimizing plover disturbance and meeting the requirements of the ESA.

The coastal dune habitat in the South Spit CMA also contains habitat for two endangered plant species; beach layia (*Layia carnosa*) and Humboldt Bay wallflower (*Erysimum mensiezii ssp. eurekense*). The BLM has instituted coastal dune restoration measures on approximately 50 acres of dune habitat. The supplementary rules will allow for vehicle use of specific corridors while protecting the dune habitat from cross-country vehicle use. The BLM consulted with the U.S. Fish and Wildlife Service (FWS) regarding management planning and habitat restoration projects for the area in 2002 and 2008. The interim final supplementary rules will help implement conservation measures for federally listed species under the ESA as determined through consultation with the FWS on the South Spit Management Plan and Environmental Assessment and the associated Biological Opinion.

The South Spit was the site of a large encampment of homeless people prior to government acquisition. During this time, the area was also the site of frequent illegal dumping, and was declared to be a public health hazard by Humboldt County. Facilities in the management area are not designed to accommodate overnight use, and limiting public access to day-use only is necessary to prevent a recurrence of health and sanitation issues, and associated resource impacts.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These interim final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These interim final supplementary rules will not have an annual effect of $100 million or more on the economy. They are not intended to affect commercial

activity, but contain rules of conduct for public use of a certain Cooperative Management Area. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The interim final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose certain rules on recreational activities on a limited portion of the public lands in California in order to protect human health, safety, and the environment, including certain sensitive natural resources as described in the Background section of this **SUPPLEMENTARY INFORMATION.**

Clarity of the Interim Final Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the interim final supplementary rules clearly stated?

(2) Do the interim final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) impair or reduce their clarity?

(4) Would the interim final supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the interim final supplementary rules easier to understand?

Please send any comments you have on the clarity of the interim final supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These interim final supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has prepared an Environmental Assessment (EA) for the management plan which provides the basis for these interim final supplementary rules. This EA and its decision record are on file and available to the public as specified in the **ADDRESSES** section above. A Determination of NEPA Adequacy (DNA) concluded that these rules conform to the applicable land use plan (RMP) and that the existing NEPA analysis for the South Spit Management Plan fully covers the rulemaking action and constitutes BLM's compliance with the requirements of NEPA.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These interim final supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). The interim final supplementary rules merely contain rules of conduct for recreational use of certain public lands. The interim final supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These interim final supplementary rules do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor do they have a significant or unique effect on small governments. These interim final supplementary rules do not require anything of state, local, or Tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The interim final supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that these interim final supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The interim final supplementary rules 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. The interim final supplementary rules affect land in only one state, California. BLM has determined that these interim final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these interim final supplementary rules will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The interim final supplementary rules impose penalties for prohibited acts, but they are straightforward and not confusing, and their enforcement should not unreasonably burden the United States Magistrate who will try any persons cited for violating them.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these interim final supplementary rules do not include policies that have Tribal implications. The interim final supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos. To comply with Executive Orders regarding government-to-

government relations with Native Americans, formal and informal contacts were made with the Table Bluff Reservation-Wiyot Tribe, the federally-recognized tribal entity in the area of the CMA, for consultation purposes. BLM provided the tribe a copy of the plan, and contacted the tribe directly to request comments and assess the need for a briefing. The tribe expressed no concerns about the South Spit Management Plan, or specifically the decisions related to these interim final supplementary rules.

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

In accordance with Executive Order 13211, the BLM has determined that the proposed rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. The interim final supplementary rules merely contain rules of conduct for recreational use of certain public lands.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, BLM has determined that the interim final supplementary rules would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodate local participation in the Federal decision-making process; and provide that the programs, projects, and activities are consistent with protecting public health and safety. The interim final supplementary rules merely contain rules of conduct for recreational use of certain public lands. Furthermore, a primary purpose of the rules is to implement a cooperative effort between local, state, and federal agencies to protect the resource values of the South Spit.

Paperwork Reduction Act

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Information Quality Act

In developing these supplementary rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Author

The principal author of these interim final supplementary rules is Bob Wick, Planning and Environmental Coordinator, Arcata Field Office, Bureau of Land Management.

For the reasons stated in the preamble and under the authority for supplementary rules found in 43 CFR 8365.1–6, the California State Director, Bureau of Land Management hereby issues interim final supplementary rules, effective upon publication, for lands managed by the BLM, including those managed under a Deed of Conservation Easement from the State of California, in the South Spit Cooperative Management Area to read as follows:

Supplementary Rules for the South Spit Cooperative Management Area

Section 1; Definitions

Habitat Restoration Area—This area begins approximately 1,500 feet south of the South Jetty and extends along the mean high tide line approximately 3,000 feet further south along the beach. The protection area extends inland from the mean high tide line approximately 300 feet into the dunes and includes approximately 24 acres. The area is identified with signing.

Temporary plover protection areas—Areas containing an active nest, a brood that frequents the area for over a week, or numerous wintering plovers that need temporary protection from public use impacts. Each area will be clearly marked using symbolic fencing and signs that state the area is closed to the public. Upon verification that plovers are no longer using an area, the signs and fencing will be removed and the temporary protection area will be discontinued.

Waveslope—The area of the beach that shows evidence of having been washed by waves during the last tidal cycle.

Camping—The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home, or trailer, for the apparent purpose of overnight occupancy.

Firewood cutting—Use of any mechanical, motorized, or hand-powered tools for the purpose of separating wood material into smaller parts.

Firewood collecting—Gathering wood material for transport out of the South Spit—CMA in quantities greater than a ''reasonable amount'' as defined below.

Symbolic fencing—Series of posts linked by rope surrounding plover protection areas to identify locations closed to public access.

South Spit Cooperative Management Area (CMA)—Public or state owned lands in all or portions of the following public land survey sections:

Humboldt Meridian, California

T. 4 N., R. 2 W.
Secs. 7, 12, 13, 14, 23, 24, 26, and 27.

A map of the South Spit CMA can be found at: *www.blm.gov/arcata,* or by contacting the BLM (see **ADDRESSES** section above).

Section 2; Supplementary Rules of Conduct

The following rules apply to all visitors to the South Spit CMA unless explicitly stated otherwise in a particular rule. Employees and agents of the BLM will be exempt from these rules during performance of specific official duties as authorized by the Arcata Field Manager.

1. The area is open for day-use only from one hour before sunrise to one hour after sunset. An exception is made for the black brandt (*Branta bernicla*) hunting season. Dates for this season are set by the CDFG and vary annually. During this season, the public will be allowed access to the area from 4 a.m. until one hour after sunset. Camping is not allowed.

2. The following are designated as vehicle use corridors, with the remainder of the area closed to all motor vehicle use:

a. South Jetty Road.

b. Cove Road.

c. Vehicle access corridors marked by signs and bounded by post/cable fencing which run west from South Jetty Road to the beach.

d. Access corridor that runs east along the jetty from the jetty parking area.

e. Waveslope.

f. Signed access routes from South Jetty Road east to the shore of Humboldt Bay.

3. The following are additional restrictions on vehicle use in the designated corridors:

a. Speed limit of 25 mph for South Jetty and Cove Roads.

b. Speed limit of 15 mph for the waveslope.

c. Street legal vehicles only are allowed on South Jetty and Cove Roads.

d. The portion of the waveslope adjacent to the Habitat Restoration Area is closed to all vehicles March 1–September 15.

e. The signed access routes from South Jetty Road east to the shore of Humboldt Bay are open to vehicles only for purposes of loading and unloading hunting supplies during waterfowl

hunting season (October–January). When not being directly used for loading and unloading, vehicles must be moved from the access corridors and parked at pulloffs along South Jetty Road. These access corridors are closed to vehicles the remainder of the year.

f. Portions of the waveslope within marked temporary plover protection areas may be closed to all vehicles if it is determined that plovers will be impacted by this use. These areas will be marked with signing visible from the waveslope indicating that they are closed to vehicles.

g. One or more of the vehicle access corridors running west from the South Jetty Road to the beach may be temporarily closed if the adjoining beach is occupied by plovers.

4. Dogs must be leashed on the west side of South Jetty Road March 1–September 15, and must be under the owner's control at all times.

5. Public use within the Habitat Restoration Area is not allowed March 1–September 15. For temporary plover protection areas, public use is not allowed as long as the protection area and associated signing remains in place.

6. Use of kites, model airplanes, and campfires are not allowed within 300 feet of temporary or permanent plover protection areas.

7. Lands west of South Jetty Road are open to equestrian use; all other lands are closed to such use.

8. Firewood cutting or collecting is allowed by permit only September 16–February 28 (February 29 in a leap year). Casual, personal use of a reasonable amount of wood as described in 43 CFR 8365.1–5 (b)5 is allowed year-round. A reasonable amount of wood material would be the amount of wood that could fit into a personal backpack or that could be carried by hand in a five-gallon bucket or similar container.

9. Firearm use is allowed only for the lawful hunting of waterfowl during CDFG established seasons. Target shooting (including bow and arrow, rifle, pistol, shotgun, air rifle, or paintball gun) is not allowed.

10. Fireworks are not allowed.

Section 3; Penalties

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7; 43 CFR 2932.57(b). Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

James Wesley Abbott,

Acting State Director.

[FR Doc. E9–12515 Filed 5–28–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Final)]

Citric Acid and Certain Citrate Salts From Canada and China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured [2] by reason of imports from Canada and China of citric acid and certain citrate salts, provided for in subheadings 2918.14.00, 2918.15.10, and 2918.15.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective April 14, 2008, following receipt of a petition filed with the Commission and Commerce by Archer Daniels Midland Co., Decatur, IL; Cargill, Inc., Wayzata, MN; and Tate & Lyle Americas, Inc., Decatur, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of citric acid and certain citrate salts from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of citric acid and certain citrate salts from Canada and China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 4, 2008 (73 FR 73955). The hearing was held in Washington, DC, on April 7, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 22, 2009. The views of the Commission are contained in USITC Publication 4076 (May 2009), entitled *Citric Acid and Certain Citrate Salts from Canada and China: Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Final).*

Issued: May 22, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–12466 Filed 5–28–09; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determined that an industry in the United States is not materially injured or threatened with material injury by reason of imports from Canada and China of citric acid and certain citrate salts.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Preliminary)]

Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Indonesia, Taiwan, and Vietnam of polyethylene retail carrier bags (PRCBs) provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States. PRCBs imported from Vietnam are alleged to be subsidized and sold in the United States at less than fair value (LTFV). PRCBs imported from Indonesia and Taiwan are alleged to be sold in the United States at LTFV.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 the investigations.

Background

On March 31, 2009, a petition was filed with the Commission and Commerce by Hilex Poly Co., LLC, Hartsville, SC, and Superbag Corp., Houston, TX, alleging that an industry in the United States is materially injured by reason of subsidized and LTFV imports of PRCBs from Vietnam and LTFV imports of PRCBs from Indonesia and Taiwan. Accordingly, effective March 31, 2009, the Commission instituted countervailing duty investigation No. 701–TA–462 and antidumping duty investigations Nos. 731–TA–1156–1158 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 8, 2009 (74 FR 16009). The conference was held in Washington, DC, on April 21, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 15, 2009. The views of the Commission are contained in USITC Publication 4080 (May 2009), entitled Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam: Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Preliminary).

Issued: May 22, 2009.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–12497 Filed 5–28–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0093]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS Extension Request Form.

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 revision of a currently approved 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 June 29, 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: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Extension Request Form.

(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 that are recipients of COPS grants which are expiring within 90 days of the date of the form.

(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 2,700 respondents annually will complete the form within 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection:

1,350 total annual burden hours.

If additional information is required contact: Lynn Bryant, Deputy 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: May 26, 2009.

Lynn Bryant,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. E9–12577 Filed 5–28–09; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0021]

Agency Information Collection Activities: Existing Collection in Use Without OMB Control Number; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Accounting System and Financial Capability Questionnaire.

The Department of Justice (DOJ), Office of Justice Programs, Office of the Chief Financial Officer, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 58, page 13474–13475 on March 27, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 29, 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 Marcia K. Paull, Chief Financial Officer, (202) 353–2820, The Office of the Chief Financial Officer, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Accounting System and Financial Capability Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is 7120/1, The Office of the Chief Financial Officer, Office of Justice Programs, U.S. Department of Justice is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit entities and not-for-profit institutions. *Other:* None. The information is required for assessing the financial risk of a potential recipient in administrating federal funds in accordance with OMB Circular A–110 and 28 CFR part 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the forms is 400 annual burden hours.

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: May 26, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E9–12574 Filed 5–28–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0010]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Appeal to the Board of Immigration Appeals From a Decision of a USCIS Officer.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 28, 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 John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 22041; telephone: (703) 305–0470.

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 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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–29, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: A party who appeals a decision of a USCIS officer to the Board of Immigration Appeals (Board). Other: None. Abstract: A party affected by a decision of a USCIS officer may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). The party must complete the Form EOIR–29 and submit it to the USCIS office having administrative control over the record of proceeding in order to exercise its regulatory right to appeal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,971 respondents will complete the form annually with an average of thirty minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1485.5 total burden hours associated with this collection annually.

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: May 21, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–12361 Filed 5–28–09; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs Proposed Collection of Information; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, is conducting a pre-clearance consultation to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3505(c)(2)(A)]. The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed.

The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by Office of Management and Budget (OMB) under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 5 CFR 1320.5(a) and 1320.6. Currently, the International Labor Affairs Bureau is soliciting comments regarding the proposed collection of nominations for candidates eligible for an annual award to recognize extraordinary efforts to reduce the worst forms of child labor. A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before August 1, 2009.

ADDRESSES: A copy of this proposed information collection request may be obtained by contacting Eileen Muirragui, telephone (202) 693–4842, fax (202) 693–4830, E-mail *muirragui.eileen@dol.gov.* Comments are to be submitted to Department of Labor/Bureau of International Labor Affairs, Attn: Eileen Muirragui, 200 Constitution Avenue, NW., (Room S–5317) Washington, DC 20210). Please use only one method of transmission for comments (mail, fax, or E-mail). The telephone and fax numbers listed here are not toll free.

SUPPLEMENTARY INFORMATION:

I. *Background:* The U.S. Department of Labor's (DOL) Iqbal Masih Award for the Elimination of Child Labor, presented by the Secretary of Labor, is intended to recognize exceptional efforts to reduce the worst forms of child labor and is in response to a Senate Committee mandate (Significant Report 110–107 DM/ILAB). The mandate directs the Secretary of Labor to establish an annual non-monetary award recognizing extraordinary efforts by an individual, company, organization or national government to reduce the worst forms of child labor. DOL is proposing a new data collection exercise to allow the public to nominate and provide critical information on proposed candidates for this award who have demonstrated extraordinary efforts to combat the worst forms of child labor.

II. *Current Action:* Pursuant to the PRA implementing regulations at 5 CFR 1320.8(d)(1), this notice requests comments on the proposed information collection request that will be part for the nomination process for the Iqbal Masih Award. The actual award process will be officially announced at a later date after the OMB has reviewed and approved the information collection requirements for the contents of nominations for the Award. Interested parties are encouraged to provide comments to the individual listed in the **ADDRESSES** section above.

III. *Desired Focus of Comments:* The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: New Collection (Request for New OMB Control Number).

Agency: U.S. Department of Labor, Bureau of International Labor Affairs.

Title: Iqbal Masih Award Nominations.

OMB Number: Pending.

Affected Public: The general public, international organizations, for-profit and not-for-profit institutions, foreign entities.

Estimated Number of Respondents: 30.

Frequency: One time per application and once per year.

Total Estimated Annual Responses: 30.

Estimated Average Time per Response: 10 Hours.

Estimated Total Annual Burden Hours: 300.

Total Estimated Annual Cost Burden: $300.

Comments submitted in response to this notice will be summarized and may be included in the request for OMB approval of the final information collection request. The comments will become a matter of public record.

Signed at Washington, DC, this 22nd day of May, 2009.

Marcia Eugenio,

Acting Associate Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs.

[FR Doc. E9–12542 Filed 5–28–09; 8:45 am]

BILLING CODE 4510–28–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2009 Circular A–133 Compliance Supplement.

SUMMARY: This notice announces the availability of the 2009 Circular A–133 Compliance Supplement. The notice also offers interested parties an opportunity to comment on the 2009 Circular A–133 Compliance Supplement. The 2009 Supplement adds four programs, including one program added to an existing cluster, and a new cross cutting section. It deletes six programs and has also been updated for program changes and technical corrections. In total, the 2009 Compliance Supplement includes 176 individual programs. A list of changes to the 2009 Supplement can be found at Appendix V. It has a new Appendix VII that provides an audit alert regarding the grant programs funded under American Recovery and Reinvestment Act of 2009 and a summary report of common audit deficiencies disclosed in the *Report on the National Single Audit Sampling Project* (published in June 2007). Due to its length, the 2009 Supplement is not included in this Notice. *See* **ADDRESSES** for information about how to obtain a copy.

DATES: The 2009 Supplement will apply to audits of fiscal years beginning after June 30, 2008 and supersedes the 2008 Supplement. All comments on the 2009 Supplement must be in writing and received by October 31, 2009. Late comments will be considered to the extent practicable.

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *Hai_M._Tran @omb.eop.gov.* Please include ''A–133 Compliance Supplement—2009'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile at 202–395–3952.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Room 6025, New Executive Office Building, Washington, DC 20503.

Comments may also be sent to via *http://www.regulations.gov*—a Federal E-Government website that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''A–133 Compliance Supplement—2009'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

ADDRESSES: The 2009 Supplement is available on-line under the Management heading from the OMB home page (Grants Management/Circulars subpage) on the Internet at *http://www.whitehouse.gov/omb.*

Hard copies of the 2009 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock number: 041–001–00667–2). The main GPO bookstore is located at 710 North Capitol Street, NW., Washington, DC 20401, (202) 512–0132.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. Subrecipients should contact their pass-through entity. Federal agencies should contact Gilbert Tran, Office of Management and Budget, Office of Federal Financial Management, at (202) 395–3052.

Danny Werfel,

Deputy Controller.

[FR Doc. E9–12495 Filed 5–28–09; 8:45 am]

BILLING CODE;P

OFFICE OF MANAGEMENT AND BUDGET

Notification of a Public Meeting on the Presidential Memorandum on Government Contracting

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of a public meeting and request for comments.

SUMMARY: The Presidential Memorandum on Government Contracting, issued on March 4, 2009, establishes a framework for improving critical components of the federal acquisition system and management of the Federal Government's ''multi-sector'' workforce of federal employees and private sector contractors. The Memorandum directs the Office of Management and Budget (OMB), in consultation with federal agency leadership, to improve and strengthen federal contracting practices and to seek input from the public on the most effective ways to achieve this goal. Section 321 of the National Defense Authorization Act (NDAA) for Fiscal Year 2009 further directs OMB to clarify the definition of an inherently governmental function and to develop criteria to be used by agency heads to identify other functions that should only be performed by Federal employees. The Presidential Memorandum is available at *http://www.whitehouse.gov/briefing_room/PresidentialActions/pg2/.* Section 321 may be found at *http://www.rules.house.gov/110/text/110_hr5658.pdf.*

In furtherance of the President's Memorandum and section 321 of the FY 2009 NDAA, OMB invites interested parties from both the public and private sectors to provide comments on: (1) Maximizing the use of competition; (2) improving practices for selecting contract types; (3) strengthening the acquisition workforce; and (4) clarifying when functions should be performed by federal employees and when contractors may be appropriately considered.

Interested parties may offer oral and/or written comments at a public meeting to be held on June 18, 2009. Parties are also encouraged to provide all written comments directly to *http://www.regulations.gov.*

DATES: A public meeting will be conducted on June 18, 2009, at 9 a.m. eastern time and ending no later than 1 p.m. eastern time.

Procedures for the public meeting: The public is asked to pre-register by June 8, 2009, due to security and seating limitations. To pre-register, please send an e-mail to Ms. Julia Wise of OFPP at jwise@omb.eop.gov. Registration check-in will begin at 8 a.m. eastern time and the meeting will start at 9 a.m. eastern time.

Oral Public Comments: A key purpose of the meeting is to encourage public comment through dialogue on each of the four topics described above. Accordingly, one hour will be allotted for each topic. A facilitator will briefly introduce each topic and organize discussion through questions.

Parties wishing to make formal oral presentations at the public meeting must contact Ms. Wise by electronic mail at: *jwise@omb.eop.gov* no later than June 8, 2009, to be placed on the public speaker list. Verbal requests for speaking time will not be taken. Time allocations for oral presentations will be limited and depend on the number of requests. All formal oral public comments must also be followed-up in writing and submitted to *http://www.regulations.gov.* When submitting your comments, reference ''Public Comments on the Government Contracting Memorandum.'' **Note:** Written statements are strongly preferred to formal oral presentations in order to provide maximum opportunity for dialogue with the participants.

Written Comments/Statements: Parties wishing to share written statements at the public meeting must submit such statements to Ms. Wise at *jwise@omb.eop.gov* by June 8, 2009. In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments to *http://www.regulations.gov* by July 17, 2009. When submitting your comments, reference ''Public Comments on the Government Contracting Memorandum.''

ADDRESSES: The public meeting will be held at the General Services Administration Auditorium located at 1800 F Street, NW., Washington, DC 20405. Enter at the second entrance on F Street.

Meeting Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ms. Wise at *jwise@omb.eop.gov* or (202) 395–7561 by June 8, 2009.

FOR FURTHER INFORMATION CONTACT: *For clarification of the subject matter related to the memorandum:* Mr. Mathew Blum, OFPP, (202) 395–4953 or *mblum@omb.eop.gov* or Ms. Julia Wise, OFPP, (202) 395–7561 or *jwise@omb.eop.gov. For public meeting information and submission of comment:* Ms. Julia Wise, OFPP, (202) 395–7561 or *jwise@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Presidential Memorandum on Government Contracting requires the Director of OMB to develop guidance by September 30, 2009, for strengthening several critical aspects of the federal acquisition system. In 2008, federal agencies used this system to acquire more than $500 billion in goods and services. The Memorandum directs OMB to focus attention on strengthening four key areas: (1) Use of competition; (2) practices for use and oversight of cost-reimbursement contracts and other contract types; (3) the capacity and ability of the acquisition workforce; and (4) policies addressing when governmental outsourcing for services is and is not appropriate. The Presidential Memorandum requires that OMB issue guidance addressing each of these areas by September 30, 2009.

Section 321 of the National Defense Authorization Act (NDAA) for Fiscal Year 2009 further directs OMB, in consultation with representatives of the Chief Acquisition Officers (CAO) Council and the Chief Human Capital Officers (CHCO) Council to take a number of steps related to the government's management of its multi-sector workforce of federal employees and contracted employees. These steps include reviewing and developing a single consistent definition of the term ''inherently governmental function'' and establishing criteria that agencies may use to identify critical functions and positions that, while not inherently governmental, should be performed only by Federal Government employees to ensure the agency maintains control of its mission and operations.

OMB is working with officials from the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), the General Services Administration (GSA), the Office of Personnel Management (OPM), and other agencies, including representatives from the CAO Council and CHCO Council, to strengthen practices in the four areas described above. OMB seeks public input on these topical areas, including the questions posed in connection with each of these areas, as described below:

(1) Maximizing the use of competition—What are the government's greatest barriers to using competition and what steps can be taken to maximize competitive practices? What is the best way to make certain that the government is not overly reliant on sole-source contracts (or contracts with a limited number of sources)? What are key principles to avoiding sole-source contracts? When is use of multiple award task and delivery order contracts appropriate? What effect, if any, do the following factors have in selecting a competition strategy: nature of the requirements (type of supplies or services), complexity, marketplace, knowledge level of the requirements, terms and conditions, time available for competing the work, dollar value, socio-economic requirements?

(2) Improving practices for selecting the right contract type—What policies and practices pose the greatest obstacles to the government's ability to achieve good outcomes in various contract types? What effect does the government's choice of contract type have on contractor pricing? What practices might better enable the government to make better use of fixed price contracts? How can agencies improve the use and management of cost-type, time and material, and labor hour contracts? Does the Federal Acquisition Regulation provide sufficient information on the appropriate use and management of various contract types to minimize risk and maximize the value?

(3) Strengthening the acquisition workforce—What are best practices, within Government and industry, for recruiting, retaining, developing and promoting high-quality acquisition and program management professionals and other mission-critical occupations? How does an organization conduct succession management that considers current needs—both quantitative and qualitative—and future human capital requirements? What are the top skills

gaps in the federal acquisition workforce (broadly defined to include not only contracting officers but also requirements and planning officials, and program and project managers, and technical representatives responsible for managing contract performance on the contracting officer's behalf, etc.)? What are Government and industry best practices for integrating requirements development and acquisition? What is the best method for assuring that sufficient funding is in place for effective acquisition oversight and management?

(4) Managing the multi-sector workforce—How might the current definition of inherently governmental function be clarified to improve management of the multi-sector workforce? What types of criteria might help agencies identify non-inherently governmental functions that are critical to an agency, with respect to its unique missions and structure, and need to be performed by federal employees in order for the agency to maintain control of its mission and operations? What criteria should agencies use in selecting activities that might be candidates for in sourcing? What criteria should agencies use in deciding whether a government activity should be competed? How do federal contracting policies affect practices in the private sector labor market? If there are laws, regulations, policies, or agency practices that a commenter believes have involved a misclassification of a function as inherently governmental or as commercial, please identify these and outline your concern in as much detail as possible, so that this can help to inform our review.

Jeffrey B. Liebman,

Executive Associate Director, Office of Management and Budget.

[FR Doc. E9–12588 Filed 5–28–09; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Temporary Corporate Credit Union Liquidity Guarantee Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: This notice contains information about revisions to the National Credit Union Administration's Temporary Corporate Credit Union Liquidity Guarantee Program (TCCULGP).

ADDRESSES: 1775 Duke Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: David Shetler, Senior Corporate Analyst, Office of Corporate Credit Unions, at the above address or telephone (703) 518–6646.

SUPPLEMENTARY INFORMATION: On October 16, 2008, the National Credit Union Administration Board approved the TCCULGP. Under the terms of this original TCCULGP, the National Credit Union Share Insurance Fund (NCUSIF) guaranteed certain unsecured debt of participating corporate credit unions (corporates) issued from October 16, 2008 through June 30, 2009, and maturing on or before June 30, 2012. NCUA published notice of the original TCCULGP in the **Federal Register**. 73 FR 68450 (November 18, 2008). NCUA also published a list of corporates that agreed to participate in the original TCCULGP on NCUA's Web site at *http://www.ncua.gov/CorporateCU/index.htm.*

The NCUA Board has determined to revise and extend the TCCULGP. The revised TCCULGP will give participating corporates the option to issue TCCULGP-guaranteed debt from July 1, 2009, through June 30, 2010 that matures on or before June 30, 2017. The revised TCCULGP also modifies the prices the corporate must pay the NCUSIF for the guarantee, without regard to whether the debt was issued before or after June 30, 2009. Both corporates participating in the original TCCULGP, and corporates that declined to participate in the original TCCULGP, will be given the option of participating in the revised TCCULGP.

As with the original TCCULGP, qualifying debt obligations under the revised TCCULGP generally include federal funds purchased, promissory notes, commercial paper, and unsubordinated unsecured notes, and NCUA's guarantee is subject to terms and conditions. In addition, corporate credit unions that participate in the revised TCCULGP may elect not to offer the NCUA guarantee on all qualifying debt obligations.

The TCCULGP guarantee is a guarantee of timely payment. The NCUSIF's obligation to pay holders of TCCULGP-guaranteed debt will arise upon the uncured failure of the corporate credit union to make a timely payment of principal or interest as required under the debt instrument. Upon the occurrence of a payment default, the NCUSIF will satisfy its guarantee obligation by making scheduled payments of principal and interest pursuant to the terms of the debt instrument through maturity (without regard to default or penalty provisions).

To ensure that a particular debt obligation issued after June 30, 2009, is covered by the revised TCCULGP guarantee, creditors wishing to take advantage of the guarantee must:

(1) Ensure the corporate credit union has elected to participate in the revised TCCULGP;

(2) Ensure the debt obligation qualifies for coverage under the terms and conditions of the revised TCCULGP, and

(3) Obtain and record a confirmation, issued by the participating corporate credit union contemporaneous with the issuance of the debt obligation, that the credit union intends that particular obligation to be guaranteed by the NCUA.

Once guaranteed by NCUA under the TCCULGP, qualifying debt will remain guaranteed until the debt is fully repaid.

NCUA will publish a list of corporates that have elected to participate in the revised TCCULGP on NCUA's Web site on or before June 30, 2009.

The legal authority for the TCCULGP is located at 12 U.S.C. 1766(a), 1766(i)(2), 1783(a), 1788(a)(1), and 1789(a)(7). The NCUA, which administers the NCUSIF, is an independent agency in the executive branch of the United States Government, and the NCUA has authorized the NCUSIF to issue the guarantees described in the TCCULGP. Accordingly, these TCCULGP guarantees represent obligations of the United States government and are backed by its full faith and credit. For a legal analysis by the U.S. Department of Justice demonstrating this full faith and credit, *see Debt Obligations of the National Credit Union Administration,* 6 Op. Off. Legal Counsel 262 (1982).

For more information about the original and revised TCCULGPs, including terms, conditions, and participants, interested parties may contact Senior Analyst Dave Shetler of the NCUA Office of Corporate Credit Unions.

Dated: May 21, 2009.

Mary Rupp,

Secretary of the Board.

[FR Doc. E9–12330 Filed 5–28–09; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–71; EA–09–072; NRC–2009–0169]

In the Matter of Detroit Edison Company; Fermi Power Plant; Independent Spent Fuel Installation; Order Modifying License (Effective Immediately)

Correction

In notice document E9–8827 beginning on page 17890 in the issue of Friday, April 17, 2009, make the following correction:

On page 17890, in the second column, the docket number should read as put forth above.

[FR Doc. Z9–8827 Filed 5–28–09; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11758]

California Disaster #CA–00135 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 05/21/2009.

Incident: California Salmon Fishery Closure 2009.

Incident Period: 04/08/2009 and continuing.

Effective Date: 05/21/2009.

EIDL Loan Application Deadline Date: 02/22/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Del Norte, Mendocino, Monterey, San Mateo, Santa Cruz, Sonoma.

Contiguous Counties:

California:

Alameda, Fresno, Glenn, Humboldt, Kings, Lake, Marin, Napa, San Benito, San Francisco, San Luis Obispo, Santa Clara, Siskiyou, Solano, Tehama, Trinity.

Oregon:

Curry, Josephine.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 117580.

The States which received an EIDL Declaration # are California, Oregon.

(Catalog of Federal Domestic Assistance Number 59002)

May 21, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–12508 Filed 5–28–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11756 and #11757]

California Disaster #CA–00134

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 05/21/2009.

Incident: Jesusita Fire.

Incident Period: 05/05/2009 and continuing.

Effective Date: 05/21/2009.

Physical Loan Application Deadline Date: 07/20/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 02/22/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Santa Barbara.

Contiguous Counties:

California: Kern, San Luis Obispo, Ventura.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.875
Homeowners Without Credit Available Elsewhere	2.437
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11756 5 and for economic injury is 11757 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 21, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–12510 Filed 5–28–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59964, File No. SR–MSRB–2009–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to the Establishment of a Pilot Phase of Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA®)

May 21, 2009.

On March 25, 2009, the Municipal Securities Rulemaking Board (''MSRB''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a pilot phase (the ''continuing disclosure pilot'') of the continuing disclosure service of the MSRB's Electronic Municipal Market Access system (''EMMA''). The proposed rule change was published for comment in the **Federal Register** on April 6, 2009.[3] The Commission received one comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59643 (Mar. 27, 2009), 74 FR 15530 (Apr. 6, 2009) (''Commission's Notice'').

letter about the proposed rule change.[4] On May 8, 2009 and May 18, 2009, the MSRB filed responses to the comment letters.[5] This order approves the proposed rule change.

The proposed rule change would establish the continuing disclosure pilot of the continuing disclosure service of the MSRB's EMMA system. The continuing disclosure pilot would receive electronic submissions of, and would make publicly available on the Internet, continuing disclosure documents and related information voluntarily submitted by issuers, obligated persons and their agents. The MSRB originally requested approval of the continuing disclosure pilot to commence operation on May 11, 2009, or such later date as may be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than 30 days after Commission approval of the proposed rule change. In addition, the MSRB requested approval of the continuing disclosure pilot for a period ending on July 1, 2009.[6] The MSRB has now requested approval of this proposed rule change by no later than May 22, 2009, so that the MSRB may commence operation of the pilot continuing disclosure service on June 1, 2009.[7] A full description of the proposal is contained in the Commission's Notice.

As previously noted, the Commission received one comment letter relating to the proposed rule change.[8] The ABA expressed concerns regarding certain legal issues relating to the protection of its intellectual property and contractual rights in the CUSIP database (the ''Database'') that it states have not yet been resolved. The ABA noted that it was the owner of the Database, which is administered by the CUSIP Service Bureau (''CSB''), as its exclusive licensee, and believed it was critical that these legal issues be resolved before the MSRB be allowed to move forward with the proposed expansion and full implementation of EMMA. It further requested that the operation of the EMMA Web site incorporate a variety of protections with respect to its intellectual property rights, including compliance with CSB's current licensing practices, permissible use guidelines, appropriate copyright notices and adequate security.[9]

In response to the ABA's concerns, the MSRB and the CSB, as the ABA's exclusive licensee, have entered into a memorandum of understanding dated May 15, 2009 (the ''MOU'') in which CSB expressly permits use of the CUSIP database for purposes, among other things, of displaying information on the MSRB's EMMA public Web portal and for inclusion in data disseminated by the MSRB to subscribers of the EMMA data feed. The MSRB has agreed in the MOU to provide certain safeguards with respect to the ABA's intellectual property and contractual rights of the ABA in the CUSIP database.[10] The Commission believes that the MSRB has taken sufficient action to ensure that all necessary arrangements will be in place in order to operate the continuing disclosure pilot as anticipated by the implementation date.

The Commission has carefully considered the proposed rule change, the comment letter received, and the MSRB's responses to the comment letter and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[11] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act[12] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[13] In particular, the Commission finds that the proposed rule change is consistent with the Act because the EMMA continuing disclosure service, including the pilot phase thereof, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The pilot phase would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–MSRB–2009–03), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12441 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* letter from Douglas Adamson, Executive Vice President, Technical Services Division, American Bankers Association (''ABA''), dated April 24, 2009.

[5] *See* letters from Ernesto A. Lanza, General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC, dated May 8, 2009 (''Response Letter I'') and May 18, 2009 (''Response Letter II'').

[6] The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009. *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2–12 adopted by the Commission. *See* Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2–12).

[7] *See* Response Letter II, *supra* note 5.

[8] *See supra* note 4.

[9] *See* letter from the ABA, *supra* note 4.

[10] *See* Response Letter II, *supra* note 5. The MSRB stated that this agreement would expand and reposition existing language on the EMMA Web site to ensure that users of the EMMA Web site have a fuller understanding of the sources of information displayed on the EMMA Web site and of the proprietary rights of third parties (including but not limited to the proprietary rights of the ABA in the Database) in certain displayed data elements. Such language would advise users of the limitations on their use or re-use of any proprietary information accessed on the EMMA Web site, and users would be required to acknowledge such limitations before being provided access to any portion of the Database. Additional systemic and reporting mechanisms would be implemented to further protect against inappropriate use of the Database. *See* Response Letter I, *supra* note 5.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–4(b)(2)(C).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59939; File No. SR–NYSEAmex–2009–17]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Revising Rules Governing the Use of Telephones on the Options Trading Floor

May 19, 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 May 4, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Exchange filed Amendment No. 1 to the proposed rule change on May 18, 2009.[5] 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 (i) eliminate old rules governing telephones and hand held devices, (ii) introduce new rules governing the use of telephones on the Trading Floor, and (iii) clarify recently adopted language regarding the removal of hand held devices from the Trading Floor. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://* www.nyse.com, at the Exchange'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, 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 this filing is to (i) eliminate old rules governing telephones, hand held devices, and Floor Wires, (ii) introduce new rules governing the use of telephones on the Trading Floor[6] and (iii) clarify recently adopted language regarding the removal of hand held devices from the Trading Floor.

The Exchange proposes to delete, from PART II—Rules Principally Applicable to Floor Transactions, Section 6—Floor Wires in its entirety. This section is obsolete given changes in telecommunications devices, changes in market structure, enhanced requirements for the systematization of orders, and maintenance of electronic records.

In its place, the Exchange proposes new Rule 902NY(i), Telephones on the Trading Floor. The new Rule is modeled on NYSE Arca Rule 6.2(h), although it does not include certain outdated or inapplicable concepts of the NYSE Arca Rule.[7]

The proposed rule requires all ATP Holders to register with the Exchange, prior to use, any telephone to be used on the Trading Floor.[8] At the time of registration, ATP Holder representatives must agree that they are aware of and understand the rules governing telephones on the Trading Floor.

In addition, the Exchange notes that separate from the registration and use of telephones, the Exchange shall retain the authority to review and approve, prior to their use, any alternative communication device (including but not limited to devices offering capabilities such as e-mail, instant messaging, texting, or Internet-supported communications). Also, according to proposed Rule 902NY(i)(1): no ATP Holder or employee of an ATP Holder, may employ any alternative communication device (other than telephones as described herein) on the Trading Floor without prior approval of the Exchange.

The proposed rule specifically prohibits the use of any device to maintain an open line of continuous communication that would allow a person off the Trading Floor to continuously monitor the activities in the Trading Crowd. This prohibition covers intercoms, walkie-talkies and any similar devices.[9]

The proposed rule governs all ATP Holders and employees of ATP Holders while on the Floor.[10] As with NYSE Arca Rule 6.2(h)(3), this proposed rule restricts the transmission of quotation information to only those quotations that have been publicly disseminated. It requires any order that is transmitted over the phone to be immediately recorded in the EOC device. It prohibits the receipt of an order over a phone when the call is placed from off the Floor into the Trading Crowd. The Rule also provides that the Exchange may require the taping of any telephone line, and that ATP Holders and their employees agree to consent to tape recording of any line.

The Exchange also proposes Rule 902(i)(5), Records, in order to require the retention of certain records of all telephones and all other approved communications devices used to conduct business on the Exchange.[11] NYSE Amex further proposes a retention period of three years, the first two years in an accessible place, consistent with the retention period of

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Amendment No. 1 amended the Exchange's proposed revision of Part 1C(i)(12) of the Supplementary Material to Rule 476A (Imposition of Fines for Minor Violations of Rules) to more accurately cite Exchange Rule 902NY(i)(1). Amendment No. 1 further amended the description of the violation in Part 1C(i)(12) to more closely reflect Rule 902NY(i)(1), which prohibits an employee of an ATP Holder, as well as an ATP Holder, to employ any alternative communication device on the Trading Floor without prior approval of the Exchange. In addition, Amendment No. l made corresponding changes to the Minor Rule Plan Recommended Fine Schedule also contained in Rule 476A.

[6] NYSE Amex LLC recently relocated its Options Trading Floor to 11 Wall Street, New York, New York, effective with the approval of SR–NYSEALTR–2008–14. *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (notice of filing of Amendment No. 1 and order granting accelerated approval of the SR–NYSEALTR–2008–14 as modified by Amendment No. 1).

[7] Certain concepts in NYSE Arca Rule 6.2(h) have no natural corollary within NYSE Amex rules, including, for example, the terms OTP Firm and trading posts. In the alternative, NYSE Amex rules refer to employees of ATP Holders or Trading Zones, respectively—and such concepts will be so reflected throughout the proposed rule. Further, concepts such as Floor Managers or General Access Phones are not applicable to NYSE Amex and therefore are not included in the proposed NYSE Amex rule.

[8] The Exchange is not proposing to require ATP Holders to register by category of user. Such a requirement is inapplicable since (i) the proposed rule applies to ATP Holders and all employees of ATP Holders, regardless of category and (ii) such a requirement was a historical response to capacity limitations (which no longer apply) thereby allowing the Exchange to restrict use by certain categories of users if capacity issues arose.

[9] Certain capacity restrictions set forth in NYSE Arca Rule 6.2(h)(2) are no longer relevant and will not be included in the NYSE Amex proposed rule.

[10] By applying the proposed rule to ATP Holders and employees of ATP Holders, the Exchange is using a term designed to encompass the same scope of individuals as the equivalent NYSE Arca rule. In doing so, NYSE Amex eliminates the need to specifically reference, as NYSE Arca Rule 6.2(h) does, each type of covered employee, such as Floor Broker, Market Maker, or Clerk. As a result, NYSE Amex (i) collapsed the substantive provisions of NYSE Arca Rule 6.2(h)(4)–(5) into proposed Rule 902NY(i)(4) and (ii) has not carried over the specific references to Floor Broker Clerks, Stock Execution Clerks and Market Maker Clerks set forth in the NYSE Arca Rule. Finally, NYSE Arca Rule 6.2(h)(5)(D), regarding Lead Market Makers, is entirely inapplicable and therefore not copied into the proposed rule.

[11] This proposed rule is modeled on NYSE Arca Rule 6.2(h)(9).

Securities and Exchange Commission Rule 17a–4.

The Exchange further proposes Rule 902(i)(6), Revocation of Registration, which establishes the Exchange's authority to deny, limit or revoke an ATP Holder's permission to use of any registered telephone on the Trading Floor. Although an ATP Holder need only register with the Exchange, prior to use, any telephone to be used on the Trading Floor, the Exchange retains the right to deny, limit, or revoke an ATP Holder's permission. Specifically, according to the proposed rule, the Exchange may deny, limit or revoke registration of any telephone whenever it determines, in accordance with the procedures set forth in Rule 476,[12] that use of such device is inconsistent with the public interest, the protection of investors, or just and equitable principles of trade, or such device has been or is being used to facilitate any violation of the Securities Exchange Act of 1934, as amended, or rules thereunder, or the Exchange rules.

Finally, similar to NYSE Arca Rule 6.2(h)(10), the Exchange will not assume any liability for problems associated with the use of telephones or other communication devices.[13]

The Exchange proposes changes to Rule 476A (Imposition of Fines for Minor Violations of Rules) to replace obsolete references to Exchange Rule 220 with accurate references to Exchange Rule 902NY(i). The Exchange also proposes adding text designed to specifically address violations of Exchange Rule 902NY(i) pertaining to the pre-approval of alternative communication devices. Consistent with violations of Exchange Rule 902NY(i) regarding an ATP Holder's failure to register telephones prior to their use, the Exchange proposes to establish first, second, and third level monetary fines of $500.00, $1,000.00, and $2,500.00 regarding an ATP Holder's unauthorized use of alternative communication devices.

The Exchange also seeks to clarify recently adopted language in Rule 902NY(g) governing the removal of Hand Held Trading Devices from the Trading Floor to make it clear that removal of such devices is prohibited, that the prohibition extends to any person, including but not limited to ATP Holders and ATP Holder employees, and that such violation is subject to disciplinary action pursuant to Rules 476 or 476A.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[14] of the Act, in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest, in that it proposes to modernize and clarify rules for the use of telephones and other communication devices on the Trading Floor.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.[22]

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–2009–17 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–NYSEAmex–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/*

[12] *See* e-mail from Andrew Stevens, Chief Counsel—U.S. Equities & Derivatives, NYSE Euronext, to Gary Rubin, Attorney-Advisor, Commission, dated May 19, 2009, confirming that the reference to Rule 475 in the Purpose section and Exhibit 1 of the proposal should be corrected to refer to Rule 476.

[13] The Exchange notes that Commentaries .01–.02 and .04 to NYSE Arca Rule 6.2 do not apply specifically to subsection (h) and therefore are not reflected in the NYSE Amex proposed rule. The Exchange also notes that the concept reflected in Commentary .03 to NYSE Arca Rule 6.2 is incorporated into NYSE Amex proposed Rule 902NY(i)(3)(B) and (4)(C).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on May 18, 2009, the date the Exchange filed Amendment No. 1.

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–NYSEAmex–2009–17 and should be submitted on or before June 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12448 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59956; File No. SR–NYSEAmex–2009–15]

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 935NY—Order Exposure Requirements To Reduce the Exposure Periods From Three Seconds to One Second

May 21, 2009.

I. Introduction

On April 21, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce certain order exposure periods from three seconds to one second. The proposed rule change was published for comment in the **Federal Register** on May 5, 2009.[3] The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 to the proposal on May 20, 2009.[4] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Amex Users may not execute as principal against orders they represent as agent from three seconds to one second. Under the current Rule 935NY, Order Exposure Requirements, Users may not execute as principal orders they represent as agent unless agency orders are first exposed on the Exchange for at least three seconds, or the User has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such bid or offer. During this three-second exposure period, other market participants may enter orders to trade against the exposed order. Under this proposal, the exposure periods contained in Rule 935NY would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[7] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic nature of the NYSE Amex System, reducing the exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that NYSE Amex members could receive, process, and communicate a response back to the Exchange within one second, the Exchange stated that it conducted a survey of Amex Trading Permit Holders (''ATP Holders'') to find out whether their systems were capable of receiving, processing, and responding to orders in a meaningful way within one second. NYSE Amex stated that of the six member firms that responded to the Exchange's survey, four indicated that the turnaround time was less than one second, one declined to comment regarding its turnaround time, and one stated that it was not exactly sure of its turnaround time.[8] NYSE Amex also stated that none of the responding ATP Holders anticipated any problems related to order processing if the Exchange reduced the exposure periods to one second, and none of the responding ATP Holders were opposed to the reduced exposure periods.[9] Based on NYSE Amex's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for NYSE Amex to reduce the exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register.** The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that the Exchange's market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59825 (April 27, 2009), 74 FR 20771 (''Notice'').

[4] Amendment No. 1 was a technical amendment to correct an inadvertent error in language in the Purpose Section of 19b–4.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

[8] *See* Notice.

[9] *Id.* NYSE Amex stated that one respondent, when asked about the proposed one second exposure periods, indicated that it ''might be hard to respond that rapidly'' but then went on to state that they felt NYSE Amex should make the change in order to match other option exchanges' rules. *Id.*

Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, NASDAQ OMX PHLX, Inc., and NYSE Arca, Inc.[10] Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSEAmex–2009–15), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12450 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59965; File No. SR–NYSE–2009–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Changing Certain NYSE Rules and Rule Interpretations To Harmonize Them With Changes to Corresponding Rules Filed by the Financial Industry Regulatory Authority, Inc.

May 21, 2009.

I. Introduction

On March 9, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make changes to certain NYSE rules and rule interpretations, to be effective retroactively to December 15, 2008, to harmonize them with changes to corresponding rules that were filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission or were effective upon filing with the Commission.[3] On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change, which was withdrawn.[4] On March 30, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The proposed rule change was published in the **Federal Register** on April 6, 2009.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD'') and NYSE Regulation, Inc., the regulatory subsidiary of the New York Stock Exchange (''NYSE''), consolidated their member firm regulation operations into FINRA. In connection with this consolidation, FINRA is in the process of establishing a consolidated FINRA rulebook (the ''Consolidated FINRA Rulebook'')[7] that will harmonize NASD rules and NYSE rules relating to member firm regulation.[8] All of these rules will be identified as ''FINRA Rules'' when the rule consolidation process is completed.

To reduce regulatory duplication, the Exchange proposes to harmonize several NYSE rules with certain FINRA rule changes by deleting NYSE rules and rule interpretations and replacing them with rules that are identical to, or substantially identical to, the FINRA Rules that were approved by, or were effective upon filing with, the Commission, subject to technical amendments to conform them to the Exchange. The Exchange also proposes to adopt the same rule numbers used in the Consolidated FINRA Rulebook to allow members and others to more readily identify those NYSE rules that have been harmonized with FINRA Rules. The Notice provides a more detailed description of the FINRA rule changes and the Exchange's proposed conforming rule changes.[9]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange is deleting certain rules and rule interpretations pertaining to: (1) Compensation or gratuities to

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[10] *See* Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (SR–CBOE–2008–16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR–ISE–2007–94); 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008) (SR–Phlx–2008–79); and 59194 (January 5, 2009), 74 FR 976 (January 9, 2009).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 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. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026,–028, –029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR–FINRA–2008–027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR–FINRA–2008–057).

[4] On March 30, 2009, the Exchange withdrew Amendment No. 1.

[5] Amendment No. 2 to SR–NYSE–2009–25 replaced the original filing in its entirety. References to Amendment No. 1 in Amendment No. 2 should be read as Amendment No. 2. *See* telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, March 30, 2009.

[6] *See* Securities Exchange Act Release No. 59655 (March 30, 2009), 74 FR 15563 (''Notice'').

[7] The current FINRA rulebook consists of three sets of rules: (1) NASD Rules, (2) rules and rule interpretations incorporated from the NYSE (''FINRA Incorporated NYSE Rules'') (together, referred to as the ''Transitional Rulebook''), and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members.

[8] Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and NASD entered into an agreement (''Rule 17d–2 Agreement'') to reduce regulatory duplication for Dual Members by allocating to FINRA regulatory responsibility for specified NYSE rules (the ''Common Rules''). *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include the FINRA Incorporated NYSE Rules. *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (SR–NASD–2007–054). Paragraph 2(b) of the Rule 17d–2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

[9] *See* Notice, *supra* note 6.

[10] 15 U.S.C. 78f.

[11] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

employees of others; (2) business conduct, trading against firm recommendations, and private sales; (3) excessive trading by members, excessive trading in discretionary accounts, successive transactions by members, manipulative operations, reopening contracts, and loans for accounts of non-members; (4) disciplinary proceedings concerning conduct that is inconsistent with just and equitable principles of trade; (5) reporting of certain information concerning short sales and proprietary transactions; (6) reporting and certification of member or member organization's supervision and compliance efforts; (7) formation and approval or merger organizations; (8) reporting of short positions; (9) notification requirements for listed securities; and (10) disclosure and monitoring of non-managed fee based accounts.

In the place of the deleted rules and interpretations, the Exchange proposes to adopt rules that are identical to, or substantially identical to, FINRA Rules that were approved by the Commission or were effective upon filing with the Commission.[13] In addition, NYSE is making non-substantive changes to the FINRA Rules that it is incorporating to reflect that they are NYSE rules and is deleting NYSE rules that have become outdated and are no longer needed. The Commission believes that the proposed rule change is appropriate and should reduce unnecessary regulatory duplication of Dual Members by harmonizing certain NYSE rules with FINRA Rules. With respect to the Exchange's proposal to delete NYSE Rule 350 (and accompanying interpretations) and to adopt NYSE Rule 3220 (relating to influencing or rewarding employees of others), the Commission notes that NYSE has stated that immediately upon Commission approval of new NYSE Rule 3220, it will issue an Information Memorandum to its members and member organizations, including NYSE-only members and those members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of NYSE Rule 3220, and that such members and member organizations are required to regulate their conduct according to Rule 3220 and the interpretive guidance related to FINRA Rule 3220.[14] Accordingly, the Commission believes that the proposed rule change is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–2009–25) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12451 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59948; File No. SR–NASDAQ–2009–047]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing

May 20, 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 May 15, 2009, The NASDAQ Stock Market LLC (the ''NASDAQ 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 NASDAQ Exchange. The NASDAQ Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) 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 Substance of the Proposed Rule Change

The NASDAQ Exchange is proposing to modify the terms and conditions under which it is affiliated with NASDAQ Options Services, LLC (''NOS''). The NASDAQ Exchange proposes to implement the proposed rule change when NASDAQ OMX PHLX, Inc. (''PHLX'') implements its XL II trading system.[4] There is no proposed rule language.

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 NASDAQ Exchange 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 NASDAQ Exchange 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 Options Services, LLC (''NOS''), which is a subsidiary of the NASDAQ Exchange, is a registered broker-dealer and a member of the NASDAQ Exchange and PHLX. In SR–NASDAQ–2006–006,[5] the Commission approved the adoption of NASDAQ Exchange Rule 2140, which provides that, subject to certain exceptions, the NASDAQ Exchange may not become an affiliate of one of its members unless the terms and conditions of such affiliation are the subject of an effective filing with the Commission. Previously, the Commission had approved the acquisition of the entity that is now NOS by The Nasdaq Stock Market, Inc., which is now The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), the holding company parent corporation of the NASDAQ Exchange and PHLX.[6] Moreover, in SR–NASDAQ–2007–004 and –080,[7] the Commission approved rules to govern the operation of The NASDAQ Options Market (''NOM'') as an options market of the NASDAQ Exchange, including rules establishing NOS as the approved outbound routing facility of the NASDAQ Exchange for NOM. The rules governing NOS's routing of orders for NOM stipulate,

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[13] *See supra* note 3.

[14] *See* telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, May 21, 2009.

[15] 15 U.S.C. 78s(b)(2).

[16] 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)(6).

[4] Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR–Phlx–2009–32); Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (SR–Phlx–2009–32, Amendment No. 1).

[5] Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006).

[6] Securities Exchange Act Release No. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128).

[7] Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004, –080).

among other things, that: (i) NOS is a facility of the NASDAQ Exchange; (ii) use of NOS's routing function by NASDAQ Exchange members is optional; (iii) NOS does not provide routing of orders in options from NOM to an exchange that is an affiliate of NASDAQ unless such orders first attempt to access any liquidity on the NOM book; [8] and (iv) NOS is a member of a self-regulatory organization that is unaffiliated with the NASDAQ Exchange and that serves as NOS's designated examining authority.

In SR–PHLX–2009–32,[9] PHLX, another exchange subsidiary of NASDAQ OMX, has proposed establishing NOS as PHLX's routing facility (the ''Routing Facility''). The sole use of the Routing Facility by the PHLX's new proposed Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to away markets pursuant to PHLX rules on behalf of PHLX. Proposed PHLX Rule 1080(m)(iii)(B) would provide that the use of NOS to route orders to other market centers is optional. Parties that do not desire to use NOS must designate orders as not available for routing (*i.e.,* a Do Not Route Order, as described in proposed PHLX Rule 1080(m)(iv)(A)).

Proposed PHLX Rule 1080(m)(iii)(C) would provide that PHLX will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between PHLX and the Routing Facility, and any other entity, including any affiliate of the Routing Facility, and, if the Routing Facility or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Routing Facility or affiliate that provides the other business activities and the routing services. In SR–PHLX–2009–32, PHLX further noted that NOS is a member of a self-regulatory organization that is unaffiliated with PHLX and that serves as NOS's designated examining authority.[10]

Finally, proposed PHLX Rule 1080(m)(iii)(D) would state that the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of PHLX, will be deemed to be the books, records, premises, officers, directors, agents, and employees of PHLX for purposes of and subject to oversight pursuant to the Act. The books and records of the Routing Facility, as a facility of PHLX, will be subject at all times to inspection and copying by PHLX and the Commission.

PHLX has also adopted a rule restricting affiliation between PHLX and its members, comparable to the NASDAQ Exchange's Rule 2140. *See* PHLX Rule 985(b). In SR–PHLX–2009–32, PHLX has requested that the Commission allow PHLX to use NOS to provide routing services for orders routed to all destinations, provided they first attempt to access liquidity on PHLX's systems before routing to other exchanges. Thus, the terms and conditions of PHLX's order routing would be substantially similar to those already approved with respect to routing by NOM through NOS.

Because orders from PHLX may be routed to NOM through NOS, it is necessary for the NASDAQ Exchange to submit this filing to establish that NOM may receive such routed orders. Accordingly, the NASDAQ Exchange proposes that NOS be permitted to route orders from PHLX to NOM subject to the following: (i) NOS is approved as and remains a facility of PHLX; (ii) use of NOS's Routing Facility function by PHLX members continues to be optional; (iii) NOS does not provide routing of orders in options from PHLX to the NASDAQ Exchange or any trading facilities thereof, unless such orders first attempt to access any liquidity on the PHLX book, and (iv) NOS is a member of a self-regulatory organization that is unaffiliated with PHLX and the NASDAQ Exchange and that serves as NOS's designated examining authority. The terms and conditions under which NOM would receive orders from PHLX through NOS are the same as the terms and conditions under which PHLX has been approved to receive orders from NOM through NOS.

2. Statutory Basis

The NASDAQ Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(5) of the Act,[12] 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 would permit inbound routing of orders from PHLX to NOM through NOS in accordance with the terms and conditions governing order routing that have been approved by the Commission with respect to receipt of orders by PHLX from NOM through NOS.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change 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 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to

[8] Securities Exchange Act Release No. 59420 (February 19, 2009), 74 FR 8597 (February 25, 2009) (SR–NASDAQ–2009–011).

[9] Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR–Phlx–2009–32); Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (SR–Phlx–2009–32, Amendment No. 1).

[10] The Financial Industry Regulatory Authority (''FINRA'') serves as NOS's designated examining authority. FINRA is unaffiliated with both PHLX and the NASDAQ Exchange.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to 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 NASDAQ Exchange has satisfied this requirement.

[16] *Id.*

designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASDAQ Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the NASDAQ Exchange's proposal is substantially similar to the proposal of another national securities exchange previously approved by the Commission and does not raise any new substantive issues.[17] The NASDAQ Exchange proposes to implement the proposed rule change when PHLX implements its XLII trading system, and states that waiving the operative delay will ensure that the NASDAQ Exchange is able to implement the proposed rule change at such time.[18] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[19]

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–NASDAQ–2009–047 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–NASDAQ–2009–047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the NASDAQ 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–NASDAQ–2009–047 and should be submitted on or before June 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12449 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

[17] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx-2008–31).

[18] *See* SR–NASDAQ–2009–047, Items 2 and 7.

[19] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59945; File No. SR–OCC–2009–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Cross-Margining of Security Futures on Exchange-Traded Funds Based on Broad-Based Stock Indices

May 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 17, 2009, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would certify security futures contracts on two exchange-traded funds (''ETFs'') based on broad-based stock indices as eligible contracts for purposes of OCC–CME cross-margining.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In proposed rule change File Nos. SR–OCC–2008–03 and SR–OCC–2008–12, respectively, OCC submitted rule changes to (i) expand its cross-margining programs with commodity clearing organizations to include as eligible contracts security futures on ETFs based on broad-based securities indices and (ii) file an Amended and Restated OCC–CME Cross-Margining Agreement (''OCC–CME XM Agreement'') and related forms of clearing member and market professional's agreements.[5] The Exhibit A attached to the OCC–CME XM Agreement referenced security futures on two such ETFs, Standard & Poor's Depository Receipts (''SPY'') and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release Nos. 57543 (March 20, 2008), 73 FR 16405 (March 27, 2008) and 58258 (July 30, 2008), 73 FR 46133 (August 7, 2008), respectively.

Diamonds Trust (''DIA''), as eligible contracts, but the filing did not specifically certify them as such.

As noted in SR–OCC–2008–03, OCC had not included security futures on ETFs based on broad-based stock indices as eligible contracts in the OCC–CME cross-margining program because it was awaiting the issuance of an order by the Commodity Futures Trading Commission (''CFTC'') providing relief from certain provisions of Section 4d(a) of the Commodity Exchange Act. The CFTC staff recently contacted OCC and CME to request that each organization separately file with the CFTC rule changes certifying futures on SPY and DIA as eligible cross-margining contracts in connection with the issuance of the order.[6] Although OCC functions as an SEC-registered clearing agency in connection with the OCC–CME cross-margin program, the CFTC made the request of OCC in its capacity as a CFTC-registered derivatives clearing organization. In response, OCC is submitting this filing to certify that futures on SPY and DIA will be eligible contracts for the OCC–CME cross-margining program upon issuance of the CFTC order and has attached as Exhibit 5A to the filing of proposed rule change a current Exhibit A to the OCC–CME XM Agreement.

The proposed change is consistent with Section 17A of the Act because it enhances the utility of an existing cross-margining program by permitting the inclusion of contracts that did not exist at the time the program was originally implemented. Cross-margining reduces systemic risk while providing lower margin costs to participants. Therefore, expanding the positions that may be included in cross-margining is beneficial to the clearing system and its participants. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

[6] Changes to Exhibit A are not required to be filed with the Commission. *See* Securities Exchange Act Release No. 57118 (January 9, 2008) 73 FR 2970 (January 16, 2008) (File No. SR–OCC–2007–19).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2009–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2009–09. 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 OCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2009–09 and should be submitted on or before June 19, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12514 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59963; File No. SR–BATS–2009–012]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rules To Offer an After Hours Trading Session

May 21, 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 May 20, 2009, BATS Exchange, Inc. (''BATS'' 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 as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rules in order to begin offering a trading session after the close of Regular Trading Hours [5] (the ''After Hours Trading Session'') that will last from 4 to 5 p.m. Eastern Time.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently allows trading during a Pre-Opening Session that lasts from 8 a.m. to 9:30 a.m. Eastern Time, with Regular Trading Hours lasting from 9:30 a.m. to 4 p.m. Eastern Time. The purpose of the proposed rule change is to amend BATS Rules in order to allow trading on the Exchange during an After Hours Trading Session that will last from 4 to 5 p.m. Eastern Time. Thus, in addition to adding a definition to BATS Rule 1.5 for the ''After Hours Trading Session,'' the Exchange has proposed to add a reference to the After Hours Trading Session to Exchange Rules that address trading outside of Regular Trading Hours (currently only through the Pre-Opening Session). The Exchange has also proposed modifications to the Time-in-Force section of BATS Rule 11.9 to indicate that a Good 'til Day Order, for which a User must indicate an expiration time, can last until the close of the After Hours Trading Session, and to add a new Time-in-Force parameter called a Good 'til Extended Day Order (''GTX''). As defined in proposed BATS Rule 11.9(c)(5), a limit order with a Time-in-Force of GTX will be cancelled by the close of the After Hours Trading Session, if not executed earlier.

Market Makers registered with the Exchange are required to satisfy certain obligations, including the requirement to maintain continuous two-sided quotations in securities in which they are registered. Pursuant to BATS Rule 11.8(b), a Market Maker's obligations apply during Regular Trading Hours on days that the Exchange is open for business. The Exchange has proposed language to clarify that to the extent a Market Maker chooses to act as a Market Maker outside of Regular Trading Hours, such Market Maker must comply, while its quotes are open, with all applicable Exchange Rules.

Trading outside of Regular Trading Hours involves potential risks, including the possibility of less information regarding indicative values, lower liquidity, higher volatility, changing prices, unlinked markets with the possibility of trade-throughs, and wider spreads. Moreover, trades executed during extended hours sessions may receive executions at inferior prices when compared to the high/low of the day. Exchange Rule 14.1(c)(2) presently requires the Exchange to distribute an information circular to its Members in connection with any UTP Derivative Security [6] traded on the Exchange that includes a section advising the Member of the risks of trading such security during the Pre-Opening Session. The Exchange has proposed to amend BATS Rule 14.1 to also include reference to the After Hours Trading Session in paragraph (c)(2), and thus, will provide information to its Members regarding trading of any UTP Derivative Security during the After Hours Trading Session in future information circulars.

In addition, and in light of the risks described above, the Exchange has proposed adding new BATS Rule 3.21 that will require Exchange Members that execute trades on behalf of customers during either extended hours session offered by the Exchange to provide such customers with notice regarding the risks of trading during extended hours. In order to reduce additional compliance burdens with respect to this disclosure requirement, the Exchange has based BATS Rule 3.21 on the rules of other self-regulatory organizations,[7] and thus, believes that many or all Exchange Members to which proposed BATS Rule 3.21 will apply are already required to provide such disclosures to their customers.

The information circular requirement applicable to the Exchange and the customer disclosure requirement applicable to Members, along with all other equity rules and trading surveillance that currently apply to trading on the Exchange during the Pre-Opening Session and Regular Trading Hours will apply to the After Hours Trading Session. As it currently does with trades executed during the Pre-Opening Session, the Exchange will designate all trades executed during the After Hours Trading Session appropriately when reporting such trades through any consolidated transaction reporting system.

The Exchange has also proposed adding new Interpretation and Policy .01 to BATS Rule 14.1, which explains the circumstances under which the Exchange will halt trading during the Pre-Opening and After Hours Trading Sessions. Specifically, as permitted pursuant to the rules of other national securities exchanges,[8] the Exchange may continue trading of a UTP Derivative Security (as defined in BATS Rule 14.1(c)) during the Pre-Opening Session if that security commenced trading during that session notwithstanding an interruption in the calculation or wide dissemination of the Intraday Indicative Value (''IIV'') or value of the underlying index, as applicable. If the IIV or value of an underlying index for a UTP Derivative Security is not calculated or available after the close of Regular Trading Hours on the Exchange, the Exchange will only trade that UTP Derivative Security to the extent the listing market traded the security until the close of its regular trading session without a halt. If the IIV or value of an underlying index for a UTP Derivative Security is still unavailable or is not being calculated as of the beginning of the Pre-Opening Session on the next business day, the Exchange will not commence trading of that security during the Pre-Opening Session, and will resume trading of the UTP Derivative Security only if the IIV or value of an underlying index for that UTP Derivative Security is again being calculated or widely disseminated, or if the listing market resumes trading.

[5] As defined in current BATS Rule 1.5(v), which the Exchange proposes to re-number as BATS Rule 1.5(w).

[6] As defined in BATS Rule 14.1(c).

[7] *See, e.g.,* NASDAQ Rule 4631, NYSE Arca Equities Rule 7.34(e), and ISE Rule 2102, Interpretation and Policy .04 and .05.

[8] *See, e.g.,* NYSE Arca Equities Rule 7.34(a)(4); ISE Rule 2102(e).

In addition to the proposed changes described above, the Exchange is proposing to make certain non-substantive changes to Interpretation and Policy .01 of Exchange Rule 8.15 to update and correct cross-references to other Exchange Rules.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to provide a competitive marketplace for Exchange Users to trade securities until 5 p.m. Eastern Time.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it 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 under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] 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 notes that BATS' proposal is substantially similar to the rules of other national securities exchanges and does not raise any new substantive issues.[15] BATS expects to have operational and technological changes in place to support the proposed rule change on May 26, 2009.[16] In addition, BATS states that the proposal does not require significant programming efforts by BATS Users or other market participants that would necessitate a delay.[17] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[18]

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–BATS–2009–012 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 No. SR–BATS–2009–012. 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 BATS. 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 No. SR–BATS–2009–012 and should be submitted on or before June 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12445 Filed 5–28–09; 8:45 am]

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to 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 notice requirement.

[14] *Id.*

[15] *See supra* note 7.

[16] *See* SR–BATS–2009–012, Item 7.

[17] *Id.*

[18] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59966; File No. SR–MSRB–2009–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access System (EMMA®) and Amendments to MSRB Rules G–32 and G–36

May 21, 2009.

On March 23, 2009, the Municipal Securities Rulemaking Board (''MSRB''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement an electronic system for free public access to primary market disclosure documents and transaction price information for the municipal securities market through the MSRB's Electronic Municipal Market Access system (''EMMA''). The proposed rule change was published for comment in the **Federal Register** on April 2, 2009.[3] The Commission received three comment letters on the proposed rule change.[4] On May 12, 2009 and May 18, 2009, the MSRB filed responses to the comment letters.[5] This order approves the proposed rule change.

The proposed rule change would: (i) Establish EMMA's permanent primary market disclosure service for electronic submission and public availability on EMMA's Internet portal of official statements, advance refunding documents and related primary market documents and information; (ii) establish EMMA's permanent transparency service making municipal securities transaction price data publicly available on the EMMA portal; (iii) establish a real-time subscription to the primary market document collection; (iv) terminate the existing pilot EMMA facility of the Municipal Securities Information Library (MSIL) system and suspend submissions of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the MSIL system and (v) amend and consolidate current Rules G–32 and G–36 into new Rule G–32 on disclosures in connection with primary offerings, replace current Forms G–36(OS) and G–36(ARD) with new Form G–32, provide transitional submission requirements, and amend certain related recordkeeping requirements, to establish an ''access equals delivery'' standard for electronic official statement dissemination in the municipal securities market.

The MSRB requested approval of this proposed rule change, along with MSRB–2009–03 and MSRB–2009–04, by no later than May 22, 2009, so that the MSRB may commence operation of the EMMA services described therein, including but not limited to the permanent primary market disclosure service and pilot continuing disclosure service, on June 1, 2009.[6] A full description of the proposal is contained in the Commission's Notice.[7]

As previously noted, the Commission received three comment letters relating to the proposed rule change.[8] One commenter, the ABA, expressed concerns regarding certain legal issues relating to the protection of its intellectual property and contractual rights in the CUSIP database (the ''Database'') that it states have not yet been resolved. The ABA noted that it was the owner of the Database, which is administered by the CUSIP Service Bureau (''CSB''), as its exclusive licensee, and believed it was critical that these legal issues be resolved before the MSRB be allowed to move forward with the proposed expansion and full implementation of EMMA. It further requested that the operation of the EMMA Web site incorporate a variety of protections with respect to its intellectual property rights, including compliance with CSB's current licensing practices, permissible use guidelines, appropriate copyright notices and adequate security.[9]

In response to the ABA's concerns, the MSRB and the CSB, as the ABA's exclusive licensee, have entered into a memorandum of understanding dated May 15, 2009 (''MOU'') in which CSB expressly permits use of the CUSIP database for purposes, among other things, of displaying information on the MSRB's EMMA public Web portal and for inclusion in data disseminated by the MSRB to subscribers of the EMMA data feed.[10] The MSRB has agreed in the MOU to provide certain safeguards with respect to the ABA's intellectual property and contractual rights of the ABA in the Database. The Commission believes that the MSRB has taken sufficient action to ensure that all necessary arrangements will be in place in order to operate the permanent primary market disclosure service and pilot continuing disclosure service, as anticipated by the implementation date.

Another commenter, BFS, believed that the adoption of an ''access equals delivery'' standard for official statements would unintentionally result in less viewing of information by individual investors and suggested alternatives to obtaining industry efficiencies without reducing the number of investors that view information contained in official statements.[11] BFS cited to internal statistics generated in connection with the Commission's adoption of rules on Internet availability of proxy materials in support of its view.[12] BFS also cited to the Commission's recently adopted rules on delivery of summary mutual fund prospectuses and posting of the statutory prospectuses on the Internet as an alternative method of providing disclosure to investors while realizing cost savings.[13]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59636 (March 27, 2009), 74 FR 15190 (''Commission's Notice'').

[4] *See* letters from Douglas Adamson, Executive Vice President, Technical Services Division, American Bankers Association (''ABA''), dated April 24, 2009; Robert Schifellite, President, Broadridge Financial Solutions, Inc. (''BFS''), dated May 5, 2009; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated May 10, 2009.

Furthermore, on May 15, 2009, representatives of BFS met with Martha M. Haines, Chief and Mary N. Simpkins, Senior Special Counsel, Office of Municipal Securities, Division of Trading and Markets to discuss the proposed rule change and to provide additional materials related to their comments on the proposal. The materials may be found at *http://www.sec.gov/comments/sr-msrb-2009–02/msrb200902–2.pdf.*

[5] *See* letters from Ernesto A. Lanza, General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC, dated May 12, 2009 (''Response Letter I'') and May 18, 2009 (''Response Letter II'').

[6] *See* Response Letter II, *supra* note 5.

[7] *See* Commission Notice, *supra* note 3.

[8] *See supra* note 4.

[9] *See* letter from the ABA, *supra* note 4.

[10] *See* Response Letter II, *supra* note 5. The MSRB stated that this agreement would expand and reposition existing language on the EMMA Web site to ensure that users of the EMMA Web site have a fuller understanding of the sources of information displayed on the EMMA Web site and of the proprietary rights of third parties (including but not limited to the proprietary rights of the ABA in the Database) in certain displayed data elements. Such language would advise users of the limitations on their use or re-use of any proprietary information accessed on the EMMA Web site, and users would be required to acknowledge such limitations before being provided access to any portion of the Database. Additional systemic and reporting mechanisms would be implemented to further protect against inappropriate use of the Database. *See* Response Letter I, *supra* note 5.

[11] *See* letter from the BFS, *supra* note 4.

[12] *See* Securities Exchange Act Release No. 55146 (January 22, 2007), 72 FR 4148 (January 29, 2007).

[13] *See* Securities Act Release No. 8998 (January 13, 2009), 74 FR 4546 (January 26, 2009).

The MSRB disagreed with BFS's comparison of on-line access to proxy materials with on-line access to official statements and, in Response Letter I, pointed out the differences between the two materials.[14] Specifically, the MSRB argued that: proxy statements are posted in a highly decentralized manner, whereas official statements are available on the centralized EMMA Web site specifically crafted for their presentation; proxy statements often are posted without any additional meaningful contextual information, whereas official statements are posted on EMMA along with transaction prices, rate/yield information and other relevant disclosures for the security being purchased and for all other securities in the marketplace, together with educational information to assist the individual investor in understanding the information in the official statement; proxy statements are unsolicited communications to a large group of investors triggered by company action (*i.e.,* the investor is passive), whereas the MSRB's official statement dissemination requirement is triggered by an investor taking action to purchase a municipal security; proxy statements typically relate to matters of a generalized importance relating to a company and normally do not relate directly to an investment, whereas official statements have direct relevance to the investor's investment; proxy statements are intended to provide information prior to an investor voting his or her proxy, whereas official statements (much like prospectuses) often serve to disclose the detailed terms of a security after the investment decision has already been made; and proxy statements generally have little value once the vote occurs, whereas official statements retain significant value for the remaining life of the security and would remain available to all investors throughout that period in EMMA's permanent library.

Furthermore, the MSRB believed that BFS seemed to place too much emphasis on cost savings as a reason for approving the proposed rule change. While acknowledging the sizeable cost saving associated with adoption of the proposal, the MSRB stated that it submitted the proposal primarily because of the significant improvements in the municipal securities disclosure system that would result from it. Specifically, the MSRB believed that the proposal would place individual investors on an equal footing with investment professionals with respect to access to key information and allow such information to flow into the marketplace more quickly.

In addition, in response to BFS's suggestion of the summary mutual fund prospectus as a possible alternative, the MSRB stated that it will monitor the level of adoption of the summary prospectus in the mutual fund market, as well as the impact its use may have on the quality and timeliness of disclosure for mutual funds. Noting that it has no authority over the nature, content or timing of issuer disclosures in the municipal securities market and therefore could not adopt a requirement for the creation and use of summary official statements by municipal issuers, the MSRB believed that the experience in the mutual fund market with summary prospectuses could be instructive in crafting future disclosure initiatives in the municipal securities market. The Commission believes that the MSRB has provided a rational response to counter BFS's belief that an ''access equals delivery'' standard for official statements would reduce viewing by individual investors of the information, and agrees with the MSRB that the proposal would make information easily available to all market participants in the municipal securities market.

Finally, the third commenter, SIFMA, was very supportive of the EMMA system, but expressed concern with certain operational and timing issues.[15] Specifically, SIFMA requested that the proposed rule change conform to the rules applicable to the registered securities market by not requiring broker dealers to accommodate a customer's standing request for copies of official statements for all of his or her transactions with the dealer. SIFMA argued that such an accommodation would require dealers to undertake an enormous amount of expense for such a limited number of retail investors and that the costs of such changes would interfere with the ability of issuers and other market participants to achieve anticipated cost savings.

In response, the MSRB stated it was important to allow investors to establish standing instructions with their dealers to receive paper copies of official statements for all of their new issue purchases and not to obligate them to make transaction by transaction requests for paper copies.[16] Although the potential for costs savings was an important factor in the MSRB's proposal, the MSRB again indicated that such a factor does not trump the needs of individual investors to obtain the disclosures they are due. The MSRB also stated that revised Rule G–32 would not obligate dealers to rely on access to electronic official statements on EMMA, and that those dealers who are not yet prepared to do so upon launch of the new rule provisions could continue to meet their official statement dissemination obligation through actual delivery of the official statement to customers as under current Rule G–32. Therefore, the MSRB did not believe any change was merited.

SIFMA also urged the MSRB to permit an underwriter to designate to the MSRB that information it has submitted to the new issue information dissemination system (''NIIDS'') under revised Rule G–34 also be used for purposes of completing new Form G–32. SIFMA requested that the MSRB make a firm commitment to take the outbound information feed from NIIDS to pre-fill the G–32 forms beginning no later than 90 days after SEC approval of the rule change proposal.

In response, the MSRB stated that, as noted in its proposed rule change, it will continue working toward permitting dealers to designate to the MSRB that information they have submitted to NIIDS under Rule G–34 should also be used for purposes of completing new Form G–32. The MSRB will publish a notice advising dealers of the availability of such functionality once it becomes available, but that it was not prepared at this time to commit to a specific timeframe for making this functionality available and that approval of the proposed rule change should not be contingent on such a commitment.

Finally, SIFMA requested that the MSRB provide dealers at least 30 calendar days' notice prior to implementing the proposed rule change, citing various factors regarding holiday and vacation schedules and lack of training and usage materials. In response, the MSRB stated that it will announce training sessions for use of the EMMA submission system and publish its user manual in the near future, and will have staff available to assist users in transitioning to the new submission process. The MSRB also indicated that, while it could not commit to providing the length of notice requested, it would provide notification of the operational date as soon as it becomes available. The Commission believes that the MSRB has reasonably addressed the operational and timing concerns raised by SIFMA, and that the changes suggested by SIFMA are not warranted at this time.

The Commission has carefully considered the proposed rule change,

[14] *See* Response Letter I, *supra* note 5.

[15] *See* letter from SIFMA, *supra* note 4.

[16] *See* Response Letter I, *supra* note 5.

the comment letters received, and the MSRB's responses to the comment letters and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B(b)(2)(C) of the Act[17] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[18]

In particular, the Commission finds that the proposed rule change is consistent with the Act because it would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities by providing a centralized venue for free public access to primary market disclosure documents and transaction price information for the municipal securities market through EMMA. The proposed rule change would provide greater access to primary market disclosure documents and transaction price information about municipal securities information to all participants in the municipal securities market on an equal basis, thereby removing potential barriers to obtaining such information, and will allow the municipal securities industry to produce more accurate trade reporting and transparency. Broad access to primary market disclosure documents and price transparency information through the EMMA portal should also assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers, their securities and the prices at which such securities trade. Furthermore, free public access to disclosure and transaction price information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, and thereby allow for fairer pricing of transactions. In addition, the electronic dissemination of primary market disclosure documents should enable issuers to reduce their issuance costs by eliminating the need to print and to distribute in paper official statements in connection with their primary offerings, thereby resulting in lower costs to issuers and savings to their citizens, lower expenses for underwriters, and potentially lower prices for investors. All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–MSRB–2009–02), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12442 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78o-4(b)(2)(C).

[18] *Id.* In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59962; File No. SR–FINRA–2009–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to the FINRA Regulation Board Composition and Conforming Changes to the FINRA Regulation By-Laws

May 21, 2009.

I. Introduction

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 (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the By-Laws of FINRA Regulation, Inc. (''FINRA Regulation'') to modify the composition of the board of directors of FINRA Regulation (''FINRA Regulation Board''), to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-Laws, and to make various non-substantive or conforming changes. The proposed rule change was published for comment in the **Federal Register** on April 8, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

On July 30, 2007, NASD and New York Stock Exchange Regulation, Inc. (''NYSE Regulation''), the regulatory subsidiary of the New York Stock Exchange, consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the Commission approved amendments to the NASD By-Laws to implement governance and related changes.[4] The approved changes included a FINRA Board governance structure that balanced public and industry representation. FINRA Regulation (formerly known as NASD Regulation, Inc. (''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 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.

The proposed rule change would modify the FINRA Regulation By-Laws to parallel more closely the composition and governance structure of the FINRA board of directors (''FINRA Board''). In addition, the proposed rule change would modify the FINRA Regulation By-Laws to reflect current business and legal practices concerning the administration and capital stock of FINRA Regulation. Furthermore, the proposed rule change would make non-substantive or conforming changes, including updating the FINRA Regulation By-Laws to reflect the corporate name change. A more detailed description of the proposed rule change is provided in the Notice.[5] The Commission discusses below the most significant aspects of the proposed changes to the FINRA Regulation By-Laws.

[3] *See* Securities Exchange Act Release No. 59696 (April 2, 2009), 74 FR 16020 (''Notice'').

[4] *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) (''Consolidation Approval Order'').

[5] *See supra* note 3.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, 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 national securities association.[6] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(4) of the Act,[7] which requires that FINRA rules be designed to assure a fair representation of FINRA's members in the selection of its directors and the administration of its affairs.

The FINRA By-Laws provide that the FINRA Board currently must consist of the Chief Executive Officer of FINRA, the Chief Executive Officer of NYSE Regulation, eleven Public Governors and ten Industry Governors, including a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor, an Investment Company Affiliate Governor, three Small Firm Governors, one Mid-Size Firm Governor, and three Large-Firm Governors.[8] The Small Firm Governors, Mid-Size Firm Governor, and Large-Firm Governors are elected by members of FINRA according to their classification as a Small Firm, Mid-Size Firm or Large Firm.[9]

The proposed rule change would provide that the FINRA Regulation Board continue to consist of between 5 and 15 members,[10] and that FINRA Regulation Board members be elected by, and drawn exclusively from, the FINRA Board. Additionally, the proposed rule change would require that the FINRA Regulation Board, like the FINRA Board, have a greater number of Public Directors than Industry Directors.[11] In addition, to ensure fair representation on the FINRA Regulation Board, the proposed rule change also would require that at least two, and not less than 20%, of the Directors of the FINRA Regulation Board be Small, Mid-Size, or Large Firm Governors.[12] The Commission notes that it previously found the composition of the FINRA Board to be consistent with the fair representation requirement of Section 15A(b)(4) of the Act.[13] The Commission further notes that it has previously found a requirement that at least 20% of directors represent the exchange's members to be consistent with the fair representation requirement applicable to national securities exchanges under Section 6(b)(3) of the Act.[14] Accordingly, the Commission believes that the requirement that the FINRA Regulation Board be composed of at least two, and not less than 20%, of FINRA Regulation's Directors be Small Firm, Mid-Size Firm or Large-Firm Governors is consistent with Section 15A(b)(4) of the Act.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] 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. The Commission believes that the proposed changes to the FINRA Regulation By-Laws should allow the FINRA Regulation Board to operate in a more effective and efficient manner by, among other things, having a similar composition and a complementary governance structure to the FINRA Board.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–FINRA–2009–020) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12444 Filed 5–28–09; 8:45 am]

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[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(4).

[8] *See* FINRA By-Laws, Article VII, Section 4 and XXII, Section 2(a).

[9] *See* FINRA By-Laws, Article I(z), Article I(dd), Article I(xx) (defining Small Firm Governor, Mid-Size Firm Governor, and Large-Firm Governor), and Article VII, Section 4(a).

[10] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.2 (Number of Directors).

[11] *See* proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications).

[12] *See id.*

[13] *See* Consolidation Approval Order, *supra* note 4.

[14] *See, e.g.,* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936, 46941 (August 12, 2008) (SR–BSE–2008–02, SR–BSE–2008–23, SR–BSE–2008–25, SR–BSECC–2008–01).

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59967; File No. SR–BATS–2009–015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.13, Entitled ''Order Execution''

May 21, 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 May 19, 2009, BATS Exchange, Inc. (''BATS'' 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 as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.13, entitled ''Order Execution,'' to provide Users[5] of the Exchange with another option with respect to the Exchange's method of processing the unfilled balance of a limit order that returns to the Exchange and is posted to the BATS Book after being routed away to one or more away Trading Centers[6] for execution.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] As defined in BATS Rule 1.5(bb).

[6] As defined in BATS Rule 2.11.

proposed rule change. The text of these 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 provide Users of the Exchange with another option with respect to the Exchange's method of processing the unfilled balance of a limit order that returns to the Exchange and is posted to the BATS Book after being routed away to one or more away Trading Centers for execution. Specifically, the Exchange will allow Users to designate an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order.

The Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to Rules 11.13(a)(1) and 11.13(a)(2)(B), as set forth below. Rule 11.13(a)(1) describes the process by which an incoming order would execute against the BATS Book.[7] To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(a)(2)(B) then describes the process of routing marketable limit orders [8] to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Book. The Exchange is proposing to permit Users to designate the order as eligible to be routed away from the Exchange, after being posted, to the extent another Trading Center locks or crosses the posted order. The Exchange believes that the proposed change to Rule 11.13 will give additional flexibility with respect to the treatment of their orders and may result in such orders being executed more quickly. The proposed option to route a posted order to a locking or crossing market is offered by at least one of the Exchange's competitors.[9]

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[11] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by allowing Users to instruct the Exchange to route a posted order away from the Exchange to the extent another market has locked or crossed such order. This functionality will allow the Exchange to seek to execute the resting order if market conditions have changed since such order was originally posted.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b 4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[14] However, Rule 19b 4(f)(6)(iii)[15] 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 notes that BATS' proposal is substantially similar to the rules of another national securities exchanges and does not raise any new substantive issues.[16] BATS expects to have operational and technological changes in place to support the proposed rule change on May 22, 2009.[17] In addition, BATS states that the proposed functionality is completely optional, and will not require any programming changes by Users of the Exchange unless they choose to use the new functionality. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[18]

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–BATS–2009–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[7] As defined in BATS Rule 1.5(d).

[8] Market orders are also routed away, pursuant to Rule 11.13(a)(2)(A), however the Exchange is not proposing any changes to the treatment of routed market orders at this time.

[9] *See, e.g.,* NASDAQ Rule 4758(a)(1)(A)(ii).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to 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 Commission deems this requirement to have been satisfied.

[15] *Id.*

[16] *See supra* note 9.

[17] *See* SR–BATS–2009–015, Item 7.

[18] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2009–015. 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 BATS. 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 No. SR–BATS–2009–015 and should be submitted on or before June 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12446 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59961; File No. SR–FINRA–2009–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Adopt IM–2830–1 (''Breakpoint'' Sales) in the Consolidated FINRA Rulebook

May 21, 2009.

On March 26, 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'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] Notice of the proposal was published for comment in the Federal Register on April 20, 2009.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[4] FINRA proposed to adopt NASD IM–2830–1 (''Breakpoint'' Sales), renumbered as FINRA Rule 2342, into the Consolidated FINRA Rulebook with the minor changes discussed below. NASD IM–2830–1 prohibits sales of mutual fund shares in amounts below a ''breakpoint'' if such sales are made ''so as to share in the higher sales charges.'' In the context of mutual fund sales, a ''breakpoint'' is that point at which the sales charge is reduced for quantity purchases of fund shares.

The application of the standard in NASD IM–2830–1 depends on the facts and circumstances of particular transactions to determine whether a member executed a transaction for the purpose of earning a higher sales charge. In 1998, NASD IM–2830–1 was amended to address the use of modern portfolio investment strategies that utilize many different mutual funds with varying investment objectives.[5] The amendments specify more precisely those facts and circumstances that FINRA will consider when examining whether trades that miss breakpoints, but are made pursuant to bona fide asset allocation programs, may have violated NASD IM–2830–1. In making such determinations, the rule provides that FINRA will consider, among other things, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers which is designed to meet their diversification needs and investment goals, and under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.

Breakpoint issues have been of concern to the regulatory community. On December 23, 2002, FINRA issued *Special Notice to Members* 02–85, which reminded firms of their obligation to apply correctly breakpoint discounts to front-end sales load mutual fund transactions.[6] In 2003, the staffs of FINRA, the SEC, and the NYSE conducted examinations of broker-dealers to assess their ability to deliver breakpoint discounts and memorialized the findings of those examinations in a joint report.[7] Concurrently, FINRA staff and industry members formed a joint task force to consider issues regarding breakpoints. The joint task force issued a report in July 2003 containing recommendations for the industry to facilitate the accurate delivery of breakpoint discounts.[8]

FINRA proposed to adopt NASD IM–2830–1 as FINRA Rule 2342, stating it believes this rule continues to be an important tool in regulating members' sales of mutual fund shares to ensure that they are not sold in dollar amounts just below breakpoints so as to share in higher sales charges. FINRA proposed to eliminate references to ''just and equitable principles of trade'' and make other minor changes to the text to reflect that it would be a stand-alone rule, rather than Interpretive Material, and to eliminate certain redundant text that is inconsistent with a rules-based format.

FINRA stated that it will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Rel. No. 59754 (Apr. 13, 2009), 74 FR 18007 (Apr. 20, 2009).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 40659 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (Order Approving Proposed Rule Change Relating to Mutual Fund Breakpoint Sales).

[6] NASD *Special Notice to Members* 02–85, NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules (December 2002).

[7] *See* Joint SEC/NASD/NYSE Report of Examinations of Broker/Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds (March 2003), available at *http://www.finra.org/Industry/Issues/Breakpoints/P006438.*

[8] *See* Report of the Joint NASD/Industry Task Force on Breakpoints (July 2003), available at *http://www.finra.org/Industry/Issues/Breakpoints/P006422.*

II. Discussion and Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] 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.[10] The Commission believes that the proposed rule change will continue to provide FINRA with an important tool in regulating members' sales of mutual fund shares, consistent with the goals of protecting investors and the public interest.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–FINRA–2009–018) be, and hereby is, approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12443 Filed 5–28–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59908; File No. SR–BX–2009–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Amend the Restated Certificate of Incorporation and By-Laws of NASDAQ OMX BX, Inc.

Correction

In notice document E9–11609, beginning on page 23459 in the issue of Tuesday, May 19, 2009, make the following correction:

On page 23462, in the second column, in the second line, ''June 8, 2009'' should read ''June 9, 2009''.

[FR Doc. Z9–11609 Filed 5–28–09; 8:45 am]

BILLING CODE 1505–01–D

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

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 May 16, 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–2009–0110.

Date Filed: May 11, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 2009.

Description: Application of Federal State Unitary Air Enterprise of Ministry For Emergency Situations of Russia requesting a foreign air carrier permit enabling it to engage in charter foreign air transportation of property and mail between a point or points in the Russian Federation and a point or points in the United States and in other charter trips in foreign air transportation, including between any point or points in the United States and any point or points in a third country or countries, subject to pertinent national, bilateral and international rules and regulations.

Docket Number: DOT–OST–2009–0116.

Date Filed: May 12, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 2, 2009.

Description: Application of Key Lime Air Corp. requesting commuter air carrier authorization so that it may provide scheduled passenger service between Denver's Rocky Mountain Metropolitan Airport (BJC) and Grand Junction, Colorado (GJT).

Docket Number: DOT–OST–2009–0120.

Date Filed: May 14, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 4, 2009.

Description: Application of Vision Airlines, Inc. (''Vision'') requesting an amendment to its certificate of public convenience and necessity which would authorize Vision to engage in scheduled interstate air transportation of persons, property and mail with large aircraft.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–12570 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 16, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 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–2009–0113.

Date Filed: May 11, 2009.

Parties: Members of the International Air Transport Association.

Subject: CSC/31/Meet/005/09 dated April 8, 2009. Finally Adopted Resolutions: Resolution 623 and Recommended Practice 1630. Intended effective date: 1 October 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–12576 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

Docket Number FRA–2009–0037.

Applicant: Norfolk Southern Corporation, Mr. B. L. Sykes, Chief Engineer C&S Engineering, Communications & Signal Department,

1200 Peachtree Street, N.E.—Box 123, Atlanta, Georgia 30309.

The Norfolk Southern Corporation (NS) request a waiver pertaining to the use of a device for automated execution of certain FRA required tests made at interlockings and control points on the NS system.

The reasons given for the proposed waiver is to permit NS to use the automated test system, known as the InterTest® system, for subject testing in lieu of tests being performed manually, as well as to permit use of electronic signature for documentation and storage of results of tests performed during two year and in service testing.

The InterTest® system is a processor-based system that performs testing by electronically exercising the inputs to the interlocking and control point locking circuitry in a manner which replicates that done by humans during a manual test. The interlocking tester consists of three subsystems that are tied together by a central control computer.

NS proposes to use the automated tester to make the following FRA required 2-year tests: 49 CFR 236.378—Time Locking; 49 CFR 236.379—Route Locking; 49 CFR 236.380—Indication Locking;

NS proposes to use the automated tester to make the following in service tests: 49 CFR 236.201—Track circuit control of signals; 49 CFR 236.202—Signal governing movements over hand-operated switch; 49 CFR 236.204—Track signaled for movements in both directions, requirements; 49 CFR 236.402—Signals controlled by track circuits and control operator; 49 CFR 236.403—Signals at control point; 49 CFR 236.404—Signal at adjacent control points; 49 CFR 236.405—Track signaled for movements in both directions, change of direction of traffic; 49 CFR 236.107—Ground Tests; and to create and maintain records of tests according to 49 CFR 236.110—Results of tests.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0037) and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC; on May 22, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–12423 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statements: National Summary of Rescinded Notices of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise the public that 12 States have rescinded Notices of Intent (NOI) to prepare 17 Environmental Impact Statements (EISs) for proposed highway projects. FHWA Division Offices, in consultation with the State Departments of Transportation (State DOT), determined that eight projects were no longer viable and have formally cancelled the projects. No resources will be expended on these projects; the environmental review process has been terminated. Seven projects are being reevaluated and, or have been reduced in scope and now meet the criteria for an Environmental Assessment (EA) or a Categorical Exclusion (CE). Two projects rescinded NOIs and will issue new NOIs as the project limits and impacts have changed.

FOR FURTHER INFORMATION CONTACT: Bethaney Bacher-Gresock, Office of Project Development and Environmental Review, (202) 366–4196; Janet Myers, Office of the Chief Counsel, (202) 366–2019; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by accessing the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

The FHWA, as lead Federal agency under the National Environmental Policy Act and in furtherance of its oversight and stewardship responsibilities under the Federal-aid Highway Program, has requested that its Division Offices review, with the State DOTs, the status of all EISs and place those projects that are not actively progressing in a timely manner in an inactive project status. The FHWA maintains lists of active and inactive projects on its Web site at *http://www.environment.fhwa.dot.gov/.* The FHWA has determined that inactive projects that are no longer a priority or that lack resources should be rescinded

with a **Federal Register** notice notifying the public that project activity has been terminated. As always, FHWA encourages State DOTs to work with their FHWA Division Office to determine when it is most prudent to initiate an EIS in order to best balance available resources as well as the expectations of the public.

The FHWA is issuing this notice to advise the public that 12 States (California, Colorado, Idaho, Indiana, Massachusetts, Minnesota, Mississippi, Missouri, New York, Ohio, Pennsylvania, Tennessee) have recently rescinded previously issued NOIs for 17 EISs for proposed highway projects. A listing of these projects, general location, original NOI date of publication in the **Federal Register**, and the date that the NOI was formally rescinded by notice published in the **Federal Register**, is provided below.

The FHWA Division Offices, in consultation with the State DOTs, determined that eight of these projects were no longer viable projects and have formally cancelled those projects. The projects are: Northwest Corridor/Northwest Parkway project in Broomfield and Jefferson Counties, Colorado; TH 169 in Millie Lacs and Crow Wing Counties, Minnesota; TH 10 project in Sherburne County, Minnesota; TH 10 in Otter Tail and Wadena Counties, Minnesota; TH 14 in Olmsted County, Minnesota; I 55 connection to I 20 in Hinds and Madison Counties, Mississippi; improvements to the transportation system in Lawrence, Christian and Greene Counties, Missouri; and US–127 and SR–63/SR–4 Interchange highway improvements near Trenton in Butler County, Ohio.

The FHWA Division Offices, in consultation with the State DOTs, determined that seven projects should be reevaluated and, or reduced in scope. In California, the US 395 project from I 15 to Farmington Road in San Bernardino County is being reduced in scope; the I 5 HOV Truck Lanes project between SR 14 and Parker Road in Los Angeles County has been reviewed and will now be processed with an EA. In Idaho, the I 84 Karcher Interchange project in Ada and Canyon Counties will now most likely be processed as an EA. In Indiana, the proposed relocation of railroad lines in Knox County, Indiana and Lawrence County, IL will be reduced in scope. In Massachusetts, the Berkley-Dighton Bridge over the Taunton River, Bristol County project has been reduced in scope and now meets the criteria for a CE. In New York, the Millennium Parkway project in Chautauqua County has been reduced in scope and now meets the criteria for a CE. In Pennsylvania, SR 56 in Johnstown has been reduced in scope and now meets the criteria for a CE.

In addition, the FHWA Division Office, in consultation with the State DOT, determined that two projects in Tennessee had changed project limits and impacts therefore it was best to rescind the original NOIs and issue new NOIs. The SR 374 project from SR 13 to SR 76 in Montgomery County, Tennessee will reissue an NOI. The North Second Street Connector project in Shelby County issued a new NOI on February 5, 2009.

State	Project name—location	NOI date	Rescinded date
CA	U.S. 395 Realignment—San Bernardino County	7/5/2006	10/30/2008
CA	Interstate 5 (I–5) HOV Truck Lanes SR14 and Parker Road Interchange—Los Angeles County.	5/10/2007	11/10/2008
CO	Northwest Corridor/Northwest Parkway—Broomfield and Jefferson Counties	7/21/2003	7/1/2008
ID	I 84 Karcher Interchange—Ada and Canyon Counties	7/17/2007	7/17/2008
IN	Railroad Line Relocations—Knox County, Indiana and Lawrence County Illinois	3/16/2007	11/25/2008
MA	Berkley-Dighton Bridge over the Taunton River—Bristol County	10/9/1985	6/19/2008
MN	TH 169—Mille Lacs and Crow Wing Counties	7/17/2000 2/4/2002	7/8/2009
MN	Tier 1—TH 10—Sherburne County	7/28/2003	10/10/2008
MN	TH 10—Otter Tail and Wadena Counties	3/27/2003	10/10/2008
MN	TH 14—Olmstead County	10/7/2002	10/10/2008
MS	Interstate Facility Connecting I–55 with I–20—Hinds and Madison Counties	8/10/2007	10/1/2008
MO	Transportation System in Lawrence Christian and Green Counties	[1]	1/23/2009
NY	Millennium Parkway Project Chautauqua County	12/27/2007	3/3/2009
OH	Highway Improvement Project US–127 and SR–63/SR–4 Interchange—Trenton, Butler County.	10/6/2000	6/30/2008
PA	SR 56—Johnstown	7/14/2001	10/l/2008
TN	State Route 374, State Route 13, State Route 76—Montgomery County	11/12/1996	12/24/2008
TN	North Second Street Connector—Shelby County	11/2/2002	12/24/2008

[1] Unknown.

(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.)

Issued on: May 14, 2009.

Jeffrey F. Paniati,

Acting Deputy Federal Highway Administrator.

[FR Doc. E9–12526 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35249]

Kern W. Schumacher—Continuance in Control Exemption—Granada Railway, LLC and Natchez Railway, LLC

Kern W. Schumacher (Mr. Schumacher), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Grenada Railway, LLC (Grenada), and Natchez Railway, LLC (Natchez), upon Grenada's and Natchez's becoming Class III rail carriers.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35247, *Grenada Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company and Waterloo Railway Company,* wherein Grenada seeks to acquire from the Illinois Central Railroad Company (ICR) and to operate an approximately 175.4-mile rail line between milepost 403.0 at Southhaven, MS, and milepost 703.8 near Canton, MS, and to acquire from

Waterloo Railway Company (WLOO) approximately 11.42 miles of line between milepost 603.0 at Water Valley Junction, MS, and milepost 614.42 at Bruce Junction, MS. This transaction is also related to STB Finance Docket No. 35248, *Natchez Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company,* wherein Natchez seeks to acquire from ICR and to operate approximately 65.6 route miles of rail line between milepost 86.0 near Brookhaven, and milepost 148.34 in Natchez, including the International Paper Spur in Natchez, all in Mississippi.

The transactions are scheduled to be consummated on or after June 12, 2009 (30 days after the notices of exemption were filed).

Mr. Schumacher is a noncarrier that currently controls four rail carriers: the Tulare Valley Railroad Company; Kern Valley Railroad Company; V&S Railroad, Inc.; and Gloster Southern Railroad Company LLC. Mr. Schumacher states that Grenada and Natchez are two newly organized Class III rail carriers. Under the purchase agreement between Grenada, ICR, and WLOO, ICR granted Grenada the right to operate on its tracks to Memphis, TN, on the north, and to Canton on the south for the sole purpose of interchanging traffic with ICR. Also, ICR will retain overhead trackage rights on the line of railroad it is selling to Grenada.

Mr. Schumacher states that: (1) The rail lines to be acquired do not connect with each other or with the lines of any other railroad controlled by Mr. Schumacher; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines with each other or with any railroads controlled by Mr. Schumacher; and (3) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 5, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35249, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW., Eighth Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at http://*www.stb.dot.gov.*

Decided: May 21, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–12366 Filed 5–28–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35248]

Natchez Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company

Natchez Railway, LLC (Natchez), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 65.6 route miles of rail line owned by Illinois Central Railroad Company (ICR) between milepost 86.0 near Brookhaven, MS, and milepost 148.34 in Natchez, MS, including the International Paper Spur in Natchez.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35249, *Kern W. Schumacher—Continuance in Control Exemption—Grenada Railway, LLC and Natchez Railway, LLC,* wherein Kern W. Schumacher seeks to continue in control of Grenada Railway, LLC (Grenada), and Natchez Railway, LLC, upon their becoming Class III rail carriers.[1]

The transaction is expected to be consummated on or shortly after June 12, 2009 (30 days after the exemption was filed).

Natchez certifies that, as a result of the proposed transaction, it will not become a Class II or Class I rail carrier and further certifies that its projected annual revenue will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 5, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35248, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW., (8th floor), Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 21, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–12368 Filed 5–28–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35247]

Grenada Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company and Waterloo Railway Company

Grenada Railway, LLC (Grenada), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase) from the Illinois Central Railroad Company (ICR) and to operate a rail line approximately 175.4

[1] STB Finance Docket No. 35249 is also related to STB Finance Docket No. 35247, *Grenada Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company and Waterloo Railway Company,* wherein Grenada has filed a notice of exemption to acquire and operate lines of ICR and Waterloo Railway Company.

miles long between milepost 403.0, at Southhaven, and milepost 703.8, near Canton, and to acquire from Waterloo Railway Company and to operate a connecting rail line approximately 11.42 miles long between milepost 603.0, at Water Valley Junction, and milepost 614.42, at Bruce Junction. All of the rail lines are located in the State of Mississippi.

Pursuant to the purchase agreement, ICR granted Grenada the right to operate on its tracks to Memphis, TN, on the north, and to Canton on the south for the sole purpose of interchanging traffic with ICR. Also, ICR will retain overhead trackage rights on the line of railroad it is selling to Grenada.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35249, *Kern W. Schumacher—Continuance in Control Exemption—Grenada Railway, LLC and Natchez Railway, LLC,* wherein Kern W. Schumacher seeks to continue in control of Grenada and Natchez Railway, LLC (Natchez), upon their becoming Class III rail carriers.[1]

The transaction is expected to be consummated on or shortly after June 12, 2009 (30 days after the notice of exemption was filed).

Grenada certifies that its projected annual revenues as a result of the transaction will not result in Grenada becoming a Class II or Class I rail carrier, but a Class III rail carrier. Grenada further certifies that its projected annual revenues upon becoming a Class III rail carrier will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 5, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35247 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW., Eighth Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 21, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–12365 Filed 5–28–09; 8:45 am]

BILLING CODE 4915–01–P

[1] STB Finance Docket No. 35249 is also related to STB Finance Docket No. 35248, *Natchez Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company,* wherein Natchez seeks to acquire from ICR and to operate approximately 65.6 miles of rail line in Natchez, MS.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35251]

Cleveland Commercial Railroad Company, LLC–Lease and Operation Exemption–Norfolk Southern Railway Company

Cleveland Commercial Railroad Company, LLC (CCR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and to operate, pursuant to a lease agreement (Agreement) entered into on May 13, 2009, with Norfolk Southern Railway Company (NSR), approximately 25.3 miles of NSR's rail line between milepost RH 2.2+/− at Cleveland, OH, and milepost RH 27.5+/− at Aurora, OH.

CCR states that it will interchange traffic with NSR at a track in the vicinity of Von Willer Yard in Cleveland. CCR also states that it interchanges traffic with the Wheeling & Lake Erie Railway Company (W&LE) at Falls Junction in Glenwillow, OH, and that CCR's lease and operation of the subject line, which physically connects with the line that CCR currently leases from W&LE, will not affect the existing CCR and W&LE relationship.[1]

CCR states that it does not believe that the Agreement contains an interchange commitment that would impede CCR's ability to interchange with third party carriers. *See* 49 CFR 1150.43(h). According to CCR, the Agreement does contain a standard rental credit provision, which CCR sought in negotiations to afford it greater financial flexibility to, among other things, improve the line's infrastructure. To ensure adherence to 49 CFR 1150.43(h) for transactions involving interchange commitments, CCR concurrently has filed with its notice a complete version of the Agreement, marked ''highly confidential'' and submitted under seal pursuant to 49 CFR 1104.14(a).

CCR certifies that its projected annual revenues as a result of the transaction will not result in CCR becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

CCR states that it expects to consummate the transaction on or after June 15, 2009. The earliest this transaction may be consummated is the June 14, 2009 effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 5, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35251, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Baker & Miller, PLLC, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 21, 2009.

[1] *See Cleveland Commercial Railroad Company, LLC–Change in Operators Exemption–Wheeling & Lake Erie Railway Company,* STB Finance Docket No. 34521 (STB served Aug. 6, 2004).

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–12336 Filed 5–27–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0143]

Port Authority Trans-Hudson Corporation; Notice of Public Hearing

On January 22, 2009, the Federal Railroad Administration (FRA) published a notice in the **Federal Register** announcing the Port Authority Trans-Hudson Corporation's (PATH) request for a waiver of compliance from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 231 (Railroad safety appliance standards) for its newly built PA–5 cars. PATH seeks a waiver of compliance from certain provisions of 49 CFR and/or exemption from certain statutory provisions of Title 49 U.S.C. Chapter 203 (the ''Safety Appliance Law,'' including 49 U.S.C. 20302) as related to hand brakes, sill steps, side and end holds, and uncoupling levers.

PATH indicates that the PA–5 vehicles it plans to utilize are equipped with spring-applied/pneumatically released parking brakes, versus conventional hand brakes as required by Section 20302. PATH further indicates that the parking brakes are capable of holding a loaded vehicle on a 5-percent grade, the steepest grade on the PATH system. Accordingly, PATH asserts that the parking brakes of its PA–5 vehicles serve the same purpose as conventional hand brakes and that such parking brakes comply with the intent of 49 CFR 231.14(a) and 238.231(h).

PATH also indicates that sill steps (required by 49 U.S.C. 20302) and side handholds (required by 49 U.S.C. 20302 to aid in coupling and uncoupling vehicles) are not necessary for safety on its PA–5 vehicles and would not enhance the safety of the vehicles. Noting that traditional sill steps and side handholds are intended to facilitate conventional switching operations requiring vehicles to be coupled manually by individuals from the exterior of the car, PATH explains that the PA–5 vehicles are equipped with fully automatic couplers that allow ''all mechanical, pneumatic and electrical end connections to be coupled or uncoupled without requiring personnel to leave the vehicle.'' Further, PATH notes that its safety rules specifically prohibit individuals from riding on sill steps, and asserts that given the unique characteristics of its operating environment (e.g., the continuously energized 650-volt third rail and close wayside obstruction clearances), sill steps would pose an unacceptable safety risk if individuals should attempt to ride on the steps in violation of PATH's safety rules. PATH further notes that its PA–5 vehicles are equipped with side door steps and corresponding vertical handholds at each of the six side doorways. PATH contends that these side door steps and handholds can be used to facilitate employee access to and egress from the vehicles should it be necessary.

Although PATH expresses the view that the PA–5 vehicles' automatic couplers eliminate the need for end handholds (required by 49 U.S.C. 20302 to aid in coupling and uncoupling vehicles), PATH acknowledges the concerns expressed by FRA regarding safe access to the manual uncoupling handle located on the top of the automatic coupler. Noting that the manual uncoupling handle is not intended for normal coupling/uncoupling operations and is intended to provide a method of manually uncoupling the vehicles in the event the automatic coupling function is unavailable, PATH proposes to apply two end handholds to each vehicle to ''provide an additional grip point to assist a worker when operating'' the manual uncoupling lever. In this connection, PATH requests a waiver of the specific number and dimension requirements of 49 CFR 231.14(d).

Again, noting that the vehicles are equipped with fully automatic couplers, along with the fact that normal coupling/uncoupling operations are performed from within the vehicle cab, PATH also seeks a waiver from the requirement of 49 CFR 231.14(g) for uncoupling levers. In support of this request, PATH notes the presence of a manual uncoupling handle ''intended for shop use, when a major system malfunction occurs, or on rare occasions during an emergency road rescue.''

The Safety Appliance Law mandates that railroad vehicles be equipped with (1) handbrakes, (2) sill steps, and (3) side and end handholds to aid in coupling and uncoupling vehicles. Because these are statutory requirements, FRA cannot waive compliance from these provisions. Instead, in accordance with 49 U.S.C. 20306, FRA may exempt PATH from these statutory requirements based on evidence received and findings developed at a hearing demonstrating that the statutory requirements ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.'' Accordingly, in order to receive evidence and develop findings to determine whether FRA should invoke its discretionary authority under 49 U.S.C. 20306 in this instance, and to receive comment on other aspects of PATH's petition relevant to the arrangement of safety appliances on its PA–5 cars, a public hearing is scheduled to begin at 9 a.m. on Wednesday, June 24, 2009, at the Hilton Gateway Hotel, located at Gateway Center, Raymond Boulevard, Newark, New Jersey (telephone number (973) 622–5000). Interested parties are invited to present oral statements at the hearing. The hearing will be informal and will be conducted by a representative designated by FRA in accordance with FRA's rules of practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding; therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement, outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

The petitioners should be present at the hearing and prepared to present evidence that the requirements of 49 U.S.C. Chapter 203, for which exemption is sought, ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.''

Issued in Washington, DC, on May 22, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–12421 Filed 5–28–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 20, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date

of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 29, 2009 to be assured of consideration.

Office of the Procurement Executive

OMB Number: 1505–0208.

Type of Review: New collection.

Title: Terrorism Risk Insurance Program Cap on Annual Liability.

Description: Section 103 of the Terrorism Risk Insurance Act of 2002 (the Act), as amended by the Reauthorization Act, sets a limit on the annual liability for insured losses at $100 billion. This section requires the Secretary of the Treasury to notify Congress not later than 15 days after the date of an act of terrorism as to whether aggregate insured losses are estimated to exceed the cap. The Act, as amended, also requires the Secretary to determine the pro rata share of insured losses under the Program when insured losses exceed the cap, and to issue regulations for carrying this out. In order to meet these requirements, Treasury may need to obtain loss information from involved insurers. This would be accomplished by the issuance of a ''data call'' to ascertain insurer losses. In the event of the imposition on insurers of a ''pro rata loss percentage'', it will be necessary to determine compliance when processing insurer claims for payment of the Federal share of compensation. This would be accomplished by nominal revision to the currently approved Treasury form TRIP 02C, ''Bordereau'' or ''Schedule C''.

Respondents: Businesses or other for-profit institutions.

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Sally Clary, Senior Insurance Analyst, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov*.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–12533 Filed 5–28–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 22, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 29, 2009, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2127.

Type of Review: Extension.

Form: 8926.

Title: Disqualified Corporate Interest Expense Disallowed Under Section 163(j) and Related Information.

Description: Pursuant to Congressional direction to determine whether the earnings stripping limitation rule of Code Section 163(j) was effective in curbing the erosion of the U.S. tax base, CC:INTL, LMSB, and the Treasury sought to create new Form 8926, Disqualified Corporate Interest Expense Disallowed Under Section 163(j) and Related Information. The new form is based on Code section 163(j) and the related proposed regulations.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 7,560,000 hours.

OMB Number: 1545–2126.

Type of Review: Extension.

Form: 8932.

Title: Form 8932—Credit for Employer Differential Wage Payments.

Description: Qualified employers will file Form 8932 to claim the credit for qualified differential wage payments paid to qualified employees after June 17, 2008, and before January 1, 2010. Authorized under I.R.C. section 45P.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 62,456 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–12536 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208172–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–208172–91 [TD 8787], Basis Reduction Due to Discharge of Indebtedness, (Sections 1.108–4, and 1.1017–1).

DATES: Written comments should be received on or before May 30, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Basis Reduction Due to Discharge of Indebtedness.

OMB Number: 1545–1539.

Regulation Project Number: REG–208172–91.

Abstract: This regulation provides ordering rules for the reduction of bases of property under Internal Revenue Code sections 108 and 1017. The regulation affects taxpayers that exclude discharge of indebtedness from gross income under Code section 108. The collection of information is required for

a taxpayer to elect to reduce the adjusted bases of depreciable property under section 108(b)(5), to elect to treat section 1221(l) real property as either depreciable property or depreciable real property, and to account for a partnership interest as either depreciable property or depreciable real property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Responses: 10,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 21, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12454 Filed 5–28–09; 8:45 am]

BILLING CODE; P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–8–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–8–91 (TD 8643), Distributions of Stock and Stock Rights (Section 1.305–5(b)(5)).

DATES: Written comments should be received on or before July 28, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Distributions of Stock and Stock Rights.

OMB Number: 1545–1438.

Regulation Project Number: CO–8–91.

Abstract: The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12455 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–27–83; LR–54–85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing temporary regulations, LR–27–83 (TD 7882), Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks (Section 145.4051–1) and LR–54–85 (TD 8050), Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements (Section 145.4052–1).

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: (LR–27–83) Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and (LR–54–85) Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

OMB Number: 1545–0745.

Regulation Project Number: LR–27–83; LR–54–85.

Abstract: LR–27–83 requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,100.

Estimated Time per Respondent: 1 hour, 1 minute.

Estimated Total Annual Burden Hours: 4,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12457 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–36

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–36, Industry Issue Program.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Allan Hopkins, 202–622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Industry Issue Program.

OMB Number: 1545–1837.

Revenue Procedure Number: Revenue Procedure 2003–36.

Abstract: Revenue Procedure 2003–36 describes the procedures for business taxpayers, industry associations, and others representing business taxpayers to submit issues for resolution under the IRS's Industry Issues Resolution Program.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Average Time Per Respondent: 40 hours.

Estimated Total Annual Reporting Burden: 2,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12458 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule F, Part I and II (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule F, Part I and II (Form 1040), Profit or Loss From Farming.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Profit or Loss From Farming.

OMB Number: 1545–1975.

Form Number: Schedule F, Part I and II (Form 1040).

Abstract: Schedule F, Part I and II (Form 1040) is used by individuals to report their Farm Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farming.

Estimated Number of Respondents: 1,323,640.

Estimated Time Per Respondent: 5 hours 53 minutes.

Estimated Total Annual Burden Hours: 7,796,240.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12463 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule E (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule E (Form 1040), Supplemental Income and Loss.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Supplemental Income and Loss.

OMB Number: 1545–1972.

Form Number: Schedule E (Form 1040).

Abstract: Schedule E (Form 1040) is used by individuals to report their Supplemental Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 45,463.

Estimated Time Per Respondent: 6 hours 16 minutes.

Estimated Total Annual Burden Hours: 284,599.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12462 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8281

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8281, Information Return for Publicity Offered Original Issue Discount Instructions.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Publicity Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: 8271.

Abstract: Internal Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicity offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes being made to Form 5452 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 500.

Estimated Time per Response: 6 hours, 7 minutes.

Estimated Total Annual Burden Hours: 3,060.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12474 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2438

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2438, Undistributed Capital Gains Tax Return.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Undistributed Capital Gains Tax Return.

OMB Number: 1545–0144.

Form Number: 2438.

Abstract: Form 2438 is used by regulated investment companies to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D). The IRS uses this information to determine the correct tax.

Current Actions: We added 4 line items to the form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 9 hrs., 46 mins.

Estimated Total Annual Burden Hours: 976.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12475 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8611

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8611, Recapture of Low-Income Housing Credit.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Recapture of Low-Income Housing Credit.

OMB Number: 1545–1035.

Form Number: 8611.

Abstract: IRC section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or if it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credits taken in prior years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 7 hours, 50 minutes.

Estimated Total Annual Burden Hours: 7,842.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12473 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8822

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 8822, Change of Address.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Change of Address

OMB Number: 1545–1163

Form Number: Form 8822

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,000,000

Estimated Time Per Respondent: 16 min.

Estimated Total Annual Burden Hours: 258,334

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12471 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–CE, Certificate of Payment of Foreign Death Tax.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Current Actions: There are no changes being made to Form 706–CE at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households.

Estimated Number of Responses: 2,250.

Estimated Time Per Response: 1 hr., 44 min.

Estimated Total Annual Burden Hours: 3,870.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12469 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–CAP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–CAP, Changes in Corporate Control and Capital Structure.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Corporate Control and Capital Structure.

OMB Number: 1545–1814.

Form Number: 1099–CAP.

Abstract: Any corporation that undergoes reorganization under Regulation section 1.6043–4T with stock, cash, and other property over $100 million must file Form 1099–CAP with IRS shareholders.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Responses: 350.

Estimated Time Per Response: 11 minutes.

Estimated Total Annual Burden Hours: 67.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12468 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–67

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.

DATES: Written comments should be received on or before *July 28, 2009* to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Settlement of Section 351 Contingent Liability Tax Shelter Cases.

OMB Number: 1545–1801.

Revenue Procedure Number: Revenue Procedure 2002–67.

Abstract: Revenue Procedure 2002–67 prescribes procedures for taxpayers who elect to participate in a settlement initiative aimed at resolving tax shelter cases involving contingent liability transactions that are the same or similar to those described in Notice 2001–17 (''contingent liability transaction''). There are two resolution methodologies: a fixed concession procedure and a fast track dispute resolution procedure that includes binding arbitration.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 150.

Estimated Average Time Per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 7,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 21, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12459 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2005–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2005–16, Master and Prototype and Volume Submitter Plans.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Master and Prototype and Volume Submitter Plans.

OMB Number: 1545–1674.

Revenue Procedure Number: Revenue Procedure 2005–16.

Abstract: The master and prototype and volume submitter revenue procedure sets forth the procedures for sponsors of master and prototype and volume submitter pension, profit-sharing and annuity plans to request an opinion letter or an advisory letter from the Internal Revenue Service that the form of a master or prototype plan or volume submitter plan meets the requirements of section 401(a) of the Internal Revenue Code. The information requested in sections 5.11, 8.02, 11.02, 12, 14.05 15.02, 18, and 24 of the master and prototype revenue procedure is in addition to the information required to be submitted with Forms 4461 (Application for Approval of Master or Prototype Defined Contribution Plan), 4461–A (Application for Approval of Master or Prototype Defined Benefit Plan) and 4461–B (Application for Approval of Master or Prototype or Plan (Mass Submitter Adopting Sponsor)). This information is needed in order to enable the Employee Plans function of the Service's Tax Exempt and Government Entities Division to issue an opinion letter or an advisory letter.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 325,800.

Estimated Time Per Respondent: 3 hours, 15 minutes.

Estimated Total Annual Burden Hours: 1,058,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12460 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–24, Qualifying Advanced Coal Project Program.

DATES: Written comments should be received on or before July 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or

through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualifying Advanced Coal Project Program.

OMB Number: 1545–2003.

Form Number: Notice 2006–24.

Abstract: This notice establishes the qualifying advanced coal project program under section 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project.

Current Actions: There are no changes to the total burden being made at this point in time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 45.

Estimated Time Per Respondent: 110 hours.

Estimated Total Annual Burden Hours: 4,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 21, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12461 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13285–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13285–A, Reducing Tax Burden on America's Taxpayers.

DATES: Written comments should be received on or before June 19, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reducing Tax Burden on America's Taxpayers.

OMB Number: 1545–2009.

Form Number: 13285–A.

Abstract: The IRS Office of Taxpayer Burden Reduction (TBR) needs the taxpaying public's help to identify meaningful taxpayer burden reduction opportunities that impact a large number of taxpayers. This form should be used to refer ideas for reducing taxpayer burden to the TBR for consideration and implementation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, non-profit institutions, farms, Federal Government, State, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 62.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–12465 Filed 5–28–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is for industry partners to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

8:30 a.m.—Meet and Greet
9 a.m.—Meeting Opens
11 a.m.—Meeting Adjourns

The topics for discussion include:

(1) ETAAC's Annual Report to Congress
(2) IRS response to Annual Report to Congress
(3) Report from ETAAC's MeF 1040 Subcommittee

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Friday, June 19, 2009. You must register in advance to be put on a guest list to attend the meeting. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. Escorts will be provided so attendees are encouraged to arrive at least 30 minutes before the meeting begins. Members of the public may file written statements sharing ideas for electronic tax administration. Send written statements to *etaac@irs.gov.*

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue, NW., Room 2116, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: You must provide your name in advance for the guest list and be able to show your state-issued picture identification on the day of the meeting. Otherwise, you will not be able to attend the meeting as this is a secured building. To receive a copy of the agenda or general information about ETAAC, please contact Cassandra Daniels on 202–283–2178 or at *etaac@irs.gov* by Monday, June 15, 2009. Notification of intent should include your name, organization and telephone number. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration and Refundable Credits, who is also the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the strategy for electronic tax administration will help IRS achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: May 20, 2009.

Angela Kraus,

Chief, Relationship Management Branch, Electronic Tax Administration and Refundable Credits.

[FR Doc. E9–12464 Filed 5–28–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
May 29, 2009

Part II

Department of Homeland Security

U.S. Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers; Notice

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of intent to distribute offset for Fiscal Year 2009.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is U.S. Customs and Border Protection's notice of intent to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2009 in connection with countervailing duty orders, antidumping duty orders, or findings under the Antidumping Act of 1921. This document sets forth the case name and number of each order or finding for which funds may become available for distribution, together with the list of affected domestic producers, based on the list supplied by the United States International Trade Commission (USITC) associated with each order or finding, who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers (and anyone alleging eligibility to receive a distribution) to file certifications to claim a distribution in relation to the listed orders or findings.

DATES: Certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by July 28, 2009. Any certification received after July 28, 2009 will be denied, making claimants ineligible for the distribution.

ADDRESSES: Certifications and any other correspondence (whether by mail, or an express or courier service) should be addressed to the Assistant Commissioner, Office of Finance, U.S. Customs and Border Protection, Revenue Division, Attention: Melissa Edwards, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278.

FOR FURTHER INFORMATION CONTACT: For general questions regarding preparation of certifications, contact Melissa Edwards, Revenue Division, (317) 614–4462. For questions regarding legal aspects, contact Elizabeth Doyle, Office of International Trade, Regulations and Rulings, (202) 325–0053.

SUPPLEMENTARY INFORMATION:

Background

The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the''Act''). The provisions of the CDSOA are contained in title X (section 1001–1003) of the Act.

The CDSOA, in section 1003 of the Act, amended title VII of the Tariff Act of 1930, as amended, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921 will be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term ''affected domestic producer'' means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) who:

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order that has been entered,

(B) Remains in operation continuing to produce the product covered by a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921, and

(C) If a company, has not been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding, e.g., opposed the petition or otherwise presented evidence in opposition to the petition.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

Section 7601(a) of the Deficit Reduction Act of 2005 repealed 19 U.S.C. 1675c. According to section 7701 of the Deficit Reduction Act, the repeal takes effect as if enacted on October 1, 2005. However, section 7601(b) provided that all duties collected on an entry filed before October 1, 2007, shall be distributed as if 19 U.S.C. 1675c had not been repealed by section 7601(a).

Consequently, the full impact of the CDSOA repeal on amounts available for distribution may be delayed for several years. First, money collected on an entry filed before October 1, 2007, will continue to be subject to the distribution procedures under former section 1675c. Second, the antidumping and countervailing duty on an entry is not available for distribution until the entry is liquidated pursuant to the direction of the Department of Commerce and the duty is collected and deposited into the special account; therefore, the distribution process will continue until all entries made before October 1, 2007, are liquidated and the antidumping and countervailing duties are collected. Because of the statutory constraints in the assessments of antidumping and countervailing duties, the distribution process will be continued for an undetermined period; however, the amount of money available for distribution can be expected to diminish over time. It should also be noted that amounts distributed may be subject to recovery as a result of reliquidations, court actions, administrative errors, and other reasons.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to U.S. Customs and Border Protection (CBP) a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding. In this regard, it is noted that the USITC has supplied CBP with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case who are potentially eligible to receive an offset. This list appears at the end of this document.

Recent decisions by the courts have interpreted various provisions of the CDSOA, particularly those related to the definition of the term ''affected domestic producer.'' In both *SKF USA Inc.* v. *United States,* 451 F. Supp. 2d 1355 (Ct. Int'l Trade 2006), and *PS Chez Sidney, L.L.C.* v. *United States,* 502 F. Supp. 2d 1318, 1325 (Ct. Int'l Trade 2007), the U.S. Court of International Trade (CIT) held that the CDSOA's support requirement was unconstitutional and severed this requirement for eligibility and remanded the matters to the USITC and CBP to review their decisions regarding CDSOA distributions. Both cases have been appealed. The CIT subsequently affirmed the USITC and CBP remand actions for both cases in *SKF USA Inc.* v. *United States,* 502 F. Supp. 2d 1325 (Ct. Int'l Trade 2007), and *PS Chez Sidney, L.L.C.* v. *United States,* 558 F. Supp. 2d 1370 (Ct. Int'l Trade 2008). *SKF* was recently reversed by the Court of Appeals for the Federal Circuit (CAFC) in *SKF USA, Inc.* v. *United States,* 556 F. 3d 1337 (Fed. Cir. 2009).

The CAFC held that the CDSOA's support requirement did not violate either the First Amendment or the Fifth Amendment. However, this decision may be subject to further judicial review. The CIT's decision in *PS Chez Sydney, L.L.C.* has been appealed to the CAFC, and the appeal has been stayed pending final disposition of *SKF.*

In another relevant court case, *Pat Huval Restaurant & Oyster Bar, Inc.* v. *United States,* 547 F. Supp. 2d 1352 (Ct. Int'l Trade 2008), the CIT held that a domestic producer's failure to file timely certifications in certain fiscal years was not necessarily a bar to seeking judicial review for disbursements made within two years of filing suit because ''Customs could have done nothing but reject them.'' That litigation is ongoing.

As a result of these decisions and a number of other pending cases, CBP has calculated and withheld from distribution an amount corresponding to the pro-rata share of all domestic producers who have filed timely and factually accurate certifications starting in 2006, despite the fact that some claimants may not have appeared on the ITC list. Therefore, at a minimum, even under the relevant court decisions, it would not have been futile for domestic producers not appearing on the ITC list to file certifications starting in fiscal year 2006. CBP will determine the proper recipients of these funds once certain legal issues are resolved. As a result, domestic producers who are not on the USITC list but believe they nonetheless are eligible for a CDSOA distribution under one or more antidumping and/or countervailing duty cases are required, as are all potential claimants that expressly appear on the list, to file their certification(s) within 60 days after this notice is published. Certifications that are not timely filed within the requisite 60 days will be summarily denied.

The CAFC ruled in *Canadian Lumber Trade Alliance* v. *United States,* 517 F. 3d 1319 (Fed. Cir. 2008), *cert. denied sub nom. United States Steel* v. *Canadian Lumber Trade Alliance,* 129 S. Ct. 344 (2008), that CBP was not authorized to distribute such antidumping and countervailing duties to the extent they were derived from goods from countries that are parties to the North American Free Trade Agreement (NAFTA). Due to this decision, CBP will no longer list cases related to NAFTA on the Preliminary Amounts Available report, and no distributions will be issued on these cases.

Regulations Implementing the CDSOA

It is noted that CBP published Treasury Decision (T.D.) 01–68 (Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers) in the **Federal Register** (66 FR 48546) on September 21, 2001, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of title 19, Code of Federal Regulations (19 CFR part 159, subpart F (§§ 159.61–159.64)). More specific guidance regarding the filing of certifications is provided in this notice in order to aid affected domestic producers and other domestic producers alleging eligibility (''claimants'' or ''domestic producers'').

Notice of Intent To Distribute Offset

This document announces that CBP intends to distribute to affected domestic producers the assessed antidumping or countervailing duties that are available for distribution in Fiscal Year 2009 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. Section 159.62(a) of title 19 (19 CFR 159.62(a)) provides that CBP will publish such a notice of intention to distribute assessed duties at least 90 calendar days before the end of a fiscal year. Failure to publish the notice at least 90 calendar days before the end of the fiscal year will not impact an affected domestic producer's obligation to file a timely certification within 60 days after the notice is published. *See, Dixon Ticonderoga* v. *United States,* 468 F.3d 1353, 1354 (Fed. Cir. 2006).

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer (and anyone alleging eligibility to receive a distribution) must submit a certification for each order or finding under which a distribution is sought, to CBP, indicating their desire to receive a distribution. To be eligible to obtain a distribution, certifications must be received by CBP no later than 60 calendar days after the date of publication of this notice of intent to distribute in the **Federal Register**. All certifications not received by the 60th day will not be eligible to receive a distribution.

As required by 19 CFR 159.62(b), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under § 159.63 to claim a distribution. Section 159.62(b) also provides that the dollar amounts subject to distribution that are contained in the Special Account for each listed order or finding are to appear in this notice. However, these dollar amounts were not available in time for inclusion in this publication. The preliminary amounts will be posted on the CBP Web site (*http://www.cbp.gov*). However, the final amounts available for disbursement may be higher or lower than the preliminary amounts.

CBP will provide general information to claimants regarding the preparation of certification(s). However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete, and accurate so as to demonstrate the eligibility of the domestic producer for the distribution requested. Failure to ensure that the certification is correct, complete, and accurate as provided in this notice will result in the domestic producer not receiving a distribution.

Specifically, to obtain a distribution of the offset under a given order or finding, each potential claimant must timely submit a certification containing the required information detailed below as to the eligibility of the domestic producer to receive the requested distribution and the total amount of the distribution that the domestic producer is claiming. Certifications should be submitted to the Assistant Commissioner, Office of Finance, U.S. Customs and Border Protection, Revenue Division. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer or allege another basis for eligibility.

A successor to a company that was an affected domestic producer at the time of acquisition should consult 19 CFR 159.61(b)(1)(i). We note that the successor company may assume joint and several liability for the return of any overpayments arising under § 159.64(c)(3) that were previously paid to the predecessor. CBP may require the successor company to provide documents to support its eligibility to receive a distribution as set out in § 159.63(d).

A member company (or its successor) of an association that appears on the list of affected domestic producers in this notice, where the member company itself does not appear on this list, should consult 19 CFR 159.61(b)(1)(ii). Specifically, for a certification under 19 CFR 159.61(b)(1)(ii), the claimant must

name the association of which it is a member and specifically establish that it was a member of the association at the time the association filed the petition with the USITC and establish that the company is a current member of the association. In order to promote accurate filings and more efficiently process the distributions, we offer the following guidance. If claimants are members of an association but the association does not file on their behalf, each association will need to provide their members with a statement which contains notarized company specific information including dates of membership, and an original signature from an authorized representative of the association. An association filing a certification on behalf of a member must also provide a power of attorney or other evidence of legal authorization from each of the domestic producers it is representing. An association filing a certification on behalf of a member is responsible for verifying the accuracy of the member's financial records, which support their claim, and is responsible for that certification. Any association filing a certification on behalf of a member is responsible for verifying the legal sufficiency and accuracy of the member's financial records, which support the claim and may be liable for repayment of any claim found to have been paid in error.

The association may file a certification in its own right to claim an offset for that order or finding, but its qualifying expenditures would be limited to those expenditures that the association itself has incurred after the date of the order or finding in connection with the particular case.

As provided in 19 CFR 159.63(a), certifications to obtain a distribution of an offset must be received by CBP no later than 60 calendar days after the date of publication of the notice of intent in the **Federal Register**. All certifications received after the 60-day deadline will be summarily denied, making claimants ineligible for the distribution regardless of whether or not they appeared on the USITC list.

A list of all certifications received will be published on the CBP Web site shortly after the receipt deadline. This publication will not confirm acceptance or validity of the certification, but merely receipt of the certification. Due to the high volume of certifications, CBP is unable to respond to individual telephone or written inquiries regarding the status of a certification appearing on the list.

While there is no required format for a certification, CBP has developed a standard certification form to aid claimants in filing certifications. The certification form is available at *http://www.pay.gov* under Public Form Name entitled CDSOA. The certification form also follows this **Federal Register** Notice. The certification form can be submitted electronically through *http://www.pay.gov* or by mail. All certifications not submitted electronically must include original signatures.

Regardless of the format for a certification, per 19 CFR 159.63(b), the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (producer/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The mailing address of the domestic producer (if a post office box, the physical street address must also appear) including, if applicable, a specific room number or department;
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s), mailing address, and, if available, facsimile transmission number(s) and electronic mail (e-mail) address(es) for the person(s). Correspondence from CBP will be directed to the designated contact(s) by either mail or phone or both;
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled ''Amount Claimed for Distribution'';
11. A statement of eligibility, as described in the section below entitled ''Eligibility to Receive Distribution''; and
12. For certifications not submitted electronically through *http://www.pay.gov*, an original signature by an individual legally authorized to bind the producer.

Qualifying Expenditure Which May Be Claimed for Distribution

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred by the domestic producer after issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within certain categories. The repeal language parallels the termination of an order. Therefore, for duty orders or findings that have not been previously revoked, expenses must be incurred before October 1, 2007, to be eligible for offset. For duty orders or findings that have been revoked, expenses must be incurred before the effective date of the revocation to be eligible for offset. For example, assume for case A–331–802 certain frozen warm-water shrimp and prawns from Ecuador, that the order date is February 1, 2005 and that the revocation effective date is August 15, 2007. In this case, eligible expenditures would have to be incurred between February 1, 2005 and August 15, 2007.

For the convenience and ease of the domestic producers, CBP is providing guidance on what the agency takes into consideration when making a calculation for each of the following categories: (1) Manufacturing facilities (Any facility used for the transformation of raw material into a finished product that is the subject of the related order or finding); (2) Equipment (Goods that are used in a business environment to aid in the manufacturing of a product that is the subject of the related order or finding); (3) Research and development (Seeking knowledge and determining the best techniques for production of the product that is the subject of the related order or finding); (4) Personnel training (Teaching of specific useful skills to personnel, that will improve performance in the production process of the product that is the subject of the related order or finding); (5) Acquisition of technology (Acquisition of applied scientific knowledge and materials to achieve an objective in the production process of the product that is the subject of the related order or finding); (6) Health care benefits for employees paid for by the employer (Health care benefits paid to employees who are producing the specific product that is the subject of the related order or finding); (7) Pension benefits for employees paid for by the employer (Pension benefits paid to employees who are producing the specific product that is the subject of the related order or finding); (8) Environmental equipment, training, or technology (Equipment, training, or technology used in the production of the product that is the subject of the related order or finding, that will assist in preventing potentially harmful factors from impacting the

environment); (9) Acquisition of raw materials and other inputs (Purchase of unprocessed materials or other inputs needed for the production of the product that is the subject of the related order or finding); and (10) Working capital or other funds needed to maintain production (Assets of a business that can be applied to its production of the product that is the subject of the related order or finding).

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must indicate: (1) The total amount of any qualifying expenditures previously certified by the domestic producer, and the amount certified by category; (2) The total amount of those expenditures which have been the subject of any prior distribution for the order or finding being certified under 19 U.S.C. 1675c; and (3) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount previously certified as noted in item ''(1)'' above minus the total amount that was the subject of any prior distribution as noted in item ''(2)'' above). In accordance with 19 CFR 159.63(b)(2)(i)–(b)(2)(iii), CBP will deduct the amount of any prior distribution from the producer's claimed amount for that case. Total amounts disbursed by CBP under the CDSOA for Fiscal Years 2001 through 2008 are available on the CBP Web site.

Additionally, under 19 CFR 159.61(c), these qualifying expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must be related to a specific case.

Eligibility To Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer or on another legal basis. Also, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (19 CFR 159.63(b)(3)(i)).

Furthermore, under 19 CFR 159.63(b)(3)(ii), where a domestic producer files a separate certification for more than one order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

Moreover, as required by 19 U.S.C. 1675c(b)(1) and 19 CFR 159.63(b)(3)(iii), the certification must include information as to whether the domestic producer remains in operation at the time the certifications are filed and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer will not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and 19 CFR 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company that opposed the investigation or was acquired by a business related to a company that opposed the investigation. If a domestic producer has been so acquired, the producer will not be considered an affected domestic producer entitled to receive a distribution. However, CBP may not make a final decision regarding a claimant's eligibility to receive funds until certain legal issues which may affect that claimant's eligibility are resolved. In these instances, CBP may withhold an amount of funds corresponding to the claimant's alleged pro rata share of funds from distribution pending the resolution of those legal issues.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled ''Verification of Certification'').

Moreover as provided in 19 CFR 159.64(b)(3), overpayments to affected domestic producers are recoverable by CBP and CBP reserves the right to use all available collection tools to recover overpayments. Overpayments may occur for a variety of reasons such as reliquidations, court actions, and administrative errors.

Review and Correction of Certification

A certification that is submitted in response to this notice of distribution and received within 60 calendar days after the date of publication of the notice in the **Federal Register** may, at CBP's sole discretion, be subject to review before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 business days after the close of the 60 calendar-day filing period, as provided in 19 CFR 159.63(c). CBP must receive a corrected certification from the domestic producer and/or an association filing on behalf of an association member within 10 business days from the date of the original denial letter. Failure to receive a corrected certification within 10 business days will result in denial of the certification at issue. It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete, and satisfactory so as to demonstrate the eligibility of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete, and satisfactory will result in the domestic producer not receiving a distribution.

Verification of Certification

Certifications are subject to CBP's verification. Claimants may also be required to provide copies of additional records for further review by CBP. Therefore, parties are required to maintain records supporting their claims for a period of five years after the filing of the certification (19 CFR 159.63(d)). The records must support each qualifying expenditure enumerated in the certification and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding. Although CBP will accept comments and information from the public and other domestic producers, CBP retains complete discretion regarding the initiation and conduct of investigations stemming from such information.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the claimant, the total dollar amount claimed by the party on the certification, as well as the total dollar amount that CBP actually disburses to that affected domestic producer as an offset, will be available for disclosure to the public, as specified in 19 CFR 159.63(e). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a

statement in a certification that this information is proprietary and exempt from disclosure will result in CBP's rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below (following the CDSOA certification form), together with the affected domestic producers associated with each order or finding who are potentially eligible to receive an offset. Those domestic producers not on the list must allege another basis for eligibility in their certification.

Dated: May 22, 2009.

Eugene H. Schied,

Assistant Commissioner, Office of Finance.

BILLING CODE 9111–14–P

Department of Homeland Security
U.S. Customs and Border Protection
Continued Dumping and Subsidy Offset Act of 2000 Form

OMB No. 1651-0086

Claimant's Information

1. Claimant's Name: _____
(As it appears on USITC List or Association Membership List, if applicable)
(If person's name list Last Name, First Name)

2. Mailing Address: _____

3. Address 2: _____

4. City: _____

5. State: _____

6. ZIP/Postal Code: _____

☐ Check here if Mailing Address is a PO Box.
(Street Address is required when Mailing Address is a PO Box)

7. Street Address: _____

8. Address 2: _____

9. City: _____

10. State: _____

11. ZIP/Postal Code: _____

12. Business Type (select one):

- ○ Sole Proprietorship
- ○ Partnership
- ○ Corporation

13. Number Type (select one and enter number below):

- ○ Social Security Number
- ○ Employee Identification Number
- ○ Federal Tax Identification Number

Enter Number Here _____

Contact Information (Primary Contact For All Certification Related Inquiries)

14. Contact Person: _____ 15. Contact Email: _____

16. Contact Phone: _____ 17. Contact Fax: _____

(If Different From Claimant's Mailing Address)

18. Address: _____

19. Address 2: _____

20. City: _____

21. State: _____

22. ZIP/Postal Code: _____

OMB No. 1651-0086

Federal Register Notice Information

23. Date of Federal Register Notice: _____

24. Are you claiming a CDSOA distribution as a successor company? (See 19 C.F.R. 159.61(b)(i)) ○ Yes ○ No

If YES, please provide the name of the company and the date of the succession:

Name _____ Date _____

25. Are you an association, coalition, or cooperative that appears on the USITC list and files on behalf of your members? (See 19 C.F.R 159.61(b)(ii)) ○ Yes ○ No

If YES, please provide Power of Attorney within 10 days of filing certification. Please mail Power of Attorney to the following address:

Assistant Commissioner
Office of Finance
Bureau of Customs and Border Protection
Revenue Division
Attn: Melissa Edwards
6650 Telecom Drive
Indianapolis, IN 46278

26. Are you filing as a member of an association, coalition, or cooperative that appears on the USITC list? ○ Yes ○ No

If YES, please provide name of organization and the date you became a member:

Name _____ Start Date _____

Previously Certified Qualifying Expenditures for All Filing Years

27. Manufacturing Facilities _____

28. Equipment _____

29. Research and Development _____

30. Personnel Training _____

31. Acquisition of Technology _____

32. Health Care Benefits for Employees Paid For by the Employer _____

33. Pension Benefits for Employees Paid For by the Employer _____

34. Environmental Equipment, Training or Technology _____

35. Acquisition of Raw Materials and Other Inputs _____

36. Working Capital or Other Funds Needed to Maintain Production _____

37. Total Amount of Qualifying Expenditures Previously Certified _____

OMB No. 1651-0086

Commerce Case Information

38. Total Amount of Qualifying Expenditures Previously Certified (from question #37 pg 2) _____

39. List Case Information For All The Cases With The Same Qualifying Expenditures On The Lines Provided Below
*Formula (Total Amt of Qualifying Expenditures Previously Certified - Prior Year Distributions = Net Amt)

Commerce Case Number	Commerce Case Name (Product/Country)	Total Amount of Prior Distributions for this case	Net Amount of Qualifying Expenditures

OMB No. 1651-0086

Statement of Eligibility

40._____(Claimant's Name as it appears on USITC List or Association Membership List, if applicable) desire to receive a distribution and is eligible to receive a distribution as an affected domestic producer. I affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distributions previously have been made.

41._____(Claimant's Name as it appears on USITC List or Association Membership List, if applicable) remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought.

42._____(Claimant's Name as it appears on USITC List or Association Membership List, if applicable) has not been acquired by a company that opposed the investigation or acquired by a business related to a company that opposed the investigation.

Certification

The information contained in this certification is true and accurate to the best of the knowledge and belief, under penalty of law, of the claimant and the claimant has records to support the qualifying expenditures being claimed.

_____ _____

43. Print Name of Person(s) Legally Authorized to Bind Producer 44. Date

_____

45. Signature of Person(s) Legally Authorized to Bind Producer

_____

46. Title of Person(s) Legally Authorized to Bind Producer

47. By submitting this certification, the certifier, _____, states that they are legally authorized to bind the producer and that information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law and the domestic producer has records to support the qualifying expenditures being claimed.

Privacy and Paperwork Reduction Act Statement

This statement is provided pursuant to the Privacy Act of 1974 (P.L. 93-579) for individuals seeking distributions under the Continued Dumping and Subsidy Offset Act of 2000 (19 U.S.C. § 1675c, as amended). The requested information is collected under the authority of 19 U.S.C. 1675c. The information collected on this form will be used by CBP to determine a claimant's eligibility for a distribution under the Continued Dumping and Subsidy Offset Act of 2000. Furnishing the information on this form is voluntary, however, failure to provide all requested information may result in denial of your certification. The name of the claimant, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that CBP actually disburses to that claimant as an offset, will be available for disclosure to the public, as specified in 19 C.F.R. § 159.63. Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal government furnish a social security number or tax identification number.

We estimate this form will take an average of 1 hour to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to CBP Office of Finance Revenue Division. The OMB number, 1651-0086, is currently valid. CBP may not collect this information, and you are not required to respond, unless this number is displayed.

BILLING CODE 9111–14–P

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–122–006	AA1921–49	Steel Jacks/Canada	Bloomfield Manufacturing (formerly Harrah Manufacturing). Seaburn Metal Products.
A–122–047	AA1921–127	Elemental Sulphur/Canada	Duval.
A–122–085	731–TA–3	Sugar and Syrups/Canada	Amstar Sugar.
A–122–401	731–TA–196	Red Raspberries/Canada	Northwest Food Producers' Association. Oregon Caneberry Commission. Rader Farms. Ron Roberts. Shuksan Frozen Food. Washington Red Raspberry Commission.
A–122–503	731–TA–263	Iron Construction Castings/Canada	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
A–122–506	731–TA–276	Oil Country Tubular Goods/Canada	CF&I Steel. Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube. Quanex. US Steel.
A–122–601	731–TA–312	Brass Sheet and Strip/Canada	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–122–605	731–TA–367	Color Picture Tubes/Canada	Industrial Union Department, AFL–CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America. Zenith Electronics.
A–122–804	731–TA–422	Steel Rails/Canada	Bethlehem Steel. CF&I Steel.
A–122–814	731–TA–528	Pure Magnesium/Canada	Magnesium Corporation of America.
A–122–822	731–TA–614	Corrosion-Resistant Carbon Steel Flat Products/ Canada.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–122–823	731–TA–575	Cut-to-Length Carbon Steel Plate/Canada	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–122–830	731–TA–789	Stainless Steel Plate in Coils/Canada	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless.
A–122–838	731–TA–928	Softwood Lumber/Canada	71 Lumber Co. Almond Bros Lbr Co. Anthony Timberlands. Balfour Lbr Co. Ball Lumber. Banks Lumber Company. Barge Forest Products Co. Beadles Lumber Co. Bearden Lumber. Bennett Lumber. Big Valley Band Mill. Bighorn Lumber Co Inc. Blue Mountain Lumber. Buddy Bean Lumber. Burgin Lumber Co Ltd. Burt Lumber Company. C&D Lumber Co. Ceda-Pine Veneer. Cersosimo Lumber Co Inc. Charles Ingram Lumber Co Inc. Charleston Heart Pine. Chesterfield Lumber. Chips. Chocorua Valley Lumber Co. Claude Howard Lumber. Clearwater Forest Industries. CLW Inc. CM Tucker Lumber Corp. Coalition for Fair Lumber Imports Executive Committee. Cody Lumber Co. Collins Pine Co. Collums Lumber. Columbus Lumber Co. Contoocook River Lumber. Conway Guiteau Lumber. Cornwright Lumber Co. Crown Pacific. Daniels Lumber Inc. Dean Lumber Co Inc. Deltic Timber Corporation. Devils Tower Forest Products. DiPrizio Pine Sales. Dorchester Lumber Co. DR Johnson Lumber. East Brainerd Lumber Co. East Coast Lumber Company. Eas-Tex Lumber. ECK Wood Products. Ellingson Lumber Co.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Elliott Sawmilling. Empire Lumber Co. Evergreen Forest Products. Excalibur Shelving Systems Inc. Exley Lumber Co. FH Stoltze Land & Lumber Co. FL Turlington Lbr Co Inc. Fleming Lumber. Flippo Lumber. Floragen Forest Products. Frank Lumber Co. Franklin Timber Co. Fred Tebb & Sons. Fremont Sawmill. Frontier Resources. Garrison Brothers Lumber Co and Subsidiaries. Georgia Lumber. Gilman Building Products. Godfrey Lumber. Granite State Forest Prod Inc. Great Western Lumber Co. Greenville Molding Inc. Griffin Lumber Company. Guess Brothers Lumber. Gulf Lumber. Gulf States Paper. Guy Bennett Lumber. Hampton Resources. Hancock Lumber. Hankins Inc. Hankins Lumber Co. Harrigan Lumber. Harwood Products. Haskell Lumber Inc. Hatfield Lumber. Hedstrom Lumber. Herrick Millwork Inc. HG Toler & Son Lumber Co Inc. HG Wood Industries LLC. Hogan & Storey Wood Prod. Hogan Lumber Co. Hood Industries. HS Hofler & Sons Lumber Co Inc. Hubbard Forest Ind Inc. HW Culp Lumber Co. Idaho Veneer Co. Industrial Wood Products. Intermountain Res LLC. International Paper. J Franklin Jones Lumber Co Inc. Jack Batte & Sons Inc. Jasper Lumber Company. JD Martin Lumber Co. JE Jones Lumber Co. Jerry G Williams & Sons. JH Knighton Lumber Co. Johnson Lumber Company. Jordan Lumber & Supply. Joseph Timber Co. JP Haynes Lbr Co Inc. JV Wells Inc. JW Jones Lumber. Keadle Lumber Enterprises. Keller Lumber. King Lumber Co. Konkolville Lumber. Langdale Forest Products. Laurel Lumber Company. Leavitt Lumber Co. Leesville Lumber Co. Limington Lumber Co. Longview Fibre Co. Lovell Lumber Co Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			M Kendall Lumber Co. Manke Lumber Co. Marriner Lumber Co. Mason Lumber. MB Heath & Sons Lumber Co. MC Dixon Lumber Co Inc. Mebane Lumber Co Inc. Metcalf Lumber Co Inc. Millry Mill Co Inc. Moose Creek Lumber Co. Moose River Lumber. Morgan Lumber Co Inc. Mount Yonah Lumber Co. Nagel Lumber. New Kearsarge Corp. New South. Nicolet Hardwoods. Nieman Sawmills SD. Nieman Sawmills WY. North Florida. Northern Lights Timber & Lumber. Northern Neck Lumber Co. Ochoco Lumber Co. Olon Belcher Lumber Co. Owens and Hurst Lumber. Packaging Corp of America. Page & Hill Forest Products. Paper, Allied-Industrial, Chemical and Energy Workers International Union. Parker Lumber. Pate Lumber Co Inc. PBS Lumber. Pedigo Lumber Co. Piedmont Hardwood Lumber Co. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant River Lumber Co. Pleasant Western Lumber Inc. Plum Creek Timber. Pollard Lumber. Portac. Potlatch. Potomac Supply. Precision Lumber Inc. Pruitt Lumber Inc. R Leon Williams Lumber Co. RA Yancey Lumber. Rajala Timber Co. Ralph Hamel Forest Products. Randy D Miller Lumber. Rappahannock Lumber Co. Regulus Stud Mills Inc. Riley Creek Lumber. Roanoke Lumber Co. Robbins Lumber. Robertson Lumber. Roseburg Forest Products Co. Rough & Ready. RSG Forest Products. Rushmore Forest Products. RY Timber Inc. Sam Mabry Lumber Co. Scotch Lumber. SDS Lumber Co. Seacoast Mills Inc. Seago Lumber. Seattle-Snohomish. Seneca Sawmill. Shaver Wood Products. Shearer Lumber Products. Shuqualak Lumber. SI Storey Lumber. Sierra Forest Products.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Sierra Pacific Industries. Sigfridson Wood Products. Silver City Lumber Inc. Somers Lbr & Mfg Inc. South & Jones. South Coast. Southern Forest Industries Inc. Southern Lumber. St Laurent Forest Products. Starfire Lumber Co. Steely Lumber Co Inc. Stimson Lumber. Summit Timber Co. Sundance Lumber. Superior Lumber. Swanson Superior Forest Products Inc. Swift Lumber. Tamarack Mill. Taylor Lumber & Treating Inc. Temple-Inland Forest Products. Thompson River Lumber. Three Rivers Timber. Thrift Brothers Lumber Co Inc. Timco Inc. Tolleson Lumber. Toney Lumber. TR Miller Mill Co. Tradewinds of Virginia Ltd. Travis Lumber Co. Tree Source Industries Inc. Tri-State Lumber. TTT Studs. United Brotherhood of Carpenters and Joiners. Viking Lumber Co. VP Kiser Lumber Co. Walton Lumber Co Inc. Warm Springs Forest Products. Westvaco Corp. Wilkins, Kaiser & Olsen Inc. WM Shepherd Lumber Co. WR Robinson Lumber Co Inc. Wrenn Brothers Inc. Wyoming Sawmills. Yakama Forest Products. Younce & Ralph Lumber Co Inc. Zip-O–Log Mills Inc.
A–122–840	731–TA–954	Carbon and Certain Alloy Steel Wire Rod/Canada ..	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–122–847	731–TA–1019B	Hard Red Spring Wheat/Canada	North Dakota Wheat Commission.
A–201–504	731–TA–297	Porcelain-on-Steel Cooking Ware/Mexico	General Housewares.
A–201–601	731–TA–333	Fresh Cut Flowers/Mexico	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
A–201–802	731–TA–451	Gray Portland Cement and Clinker/Mexico	Alamo Cement. Blue Circle. BoxCrow Cement. Calaveras Cement. Capitol Aggregates.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Centex Cement. Florida Crushed Stone. Gifford-Hill. Hanson Permanente Cement. Ideal Basic Industries. Independent Workers of North America (Locals 49, 52, 89, 192 and 471). International Union of Operating Engineers (Local 12). National Cement Company of Alabama. National Cement Company of California. Phoenix Cement. Riverside Cement. Southdown. Tarmac America. Texas Industries.
A–201–805	731–TA–534	Circular Welded Nonalloy Steel Pipe/Mexico	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–201–806	731–TA–547	Carbon Steel Wire Rope/Mexico	Bridon American. Macwhyte. Paulsen Wire Rope. The Rochester Corporation. United Automobile, Aerospace and Agricultural Implement Workers (Local 960). Williamsport. Wire-rope Works. Wire Rope Corporation of America.
A–201–809	731–TA–582	Cut-to-Length Carbon Steel Plate/Mexico	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–201–817	731–TA–716	Oil Country Tubular Goods/Mexico	IPSCO. Koppel Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A–201–820	731–TA–747	Fresh Tomatoes/Mexico	Accomack County Farm Bureau. Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee and Virginia Tomato Growers. Florida Farm Bureau Federation. Florida Fruit and Vegetable Association. Florida Tomato Exchange. Florida Tomato Growers Exchange. Gadsden County Tomato Growers Association. South Carolina Tomato Association.
A–201–822	731–TA–802	Stainless Steel Sheet and Strip/Mexico	Allegheny Ludlum. Armco. Bethlehem Steel. Carpenter Technology Corp.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			J&L Specialty Steel.
			North American Stainless.
			United Steelworkers of America.
A–201–827	731–TA–848	Large-Diameter Carbon Steel Seamless Pipe/Mexico.	North Star Steel.
			Timken.
			US Steel.
			United Steelworkers of America.
			USS/Kobe.
A–201–828	731–TA–920	Welded Large Diameter Line Pipe/Mexico	American Cast Iron Pipe.
			Berg Steel Pipe.
			Bethlehem Steel.
			Napa Pipe/Oregon Steel Mills.
			Saw Pipes USA.
			Stupp.
			US Steel.
A–201–830	731–TA–958	Carbon and Certain Alloy Steel Wire Rod/Mexico	AmeriSteel.
			Birmingham Steel.
			Cascade Steel Rolling Mills.
			Connecticut Steel Corp.
			Co-Steel Raritan.
			GS Industries.
			Keystone Consolidated Industries.
			North Star Steel Texas.
			Nucor Steel-Nebraska (a division of Nucor Corp).
			Republic Technologies International.
			Rocky Mountain Steel Mills.
A–201–831	731–TA–1027 ...	Prestressed Concrete Steel Wire Strand/Mexico	American Spring Wire Corp.
			Insteel Wire Products Co.
			Sivaco Georgia LLC.
			Strand Tech Martin Inc.
			Sumiden Wire Products Corp.
A–201–834	731–TA–1085 ...	Purified Carboxymethylcellulose/Mexico	Aqualon Co a Division of Hercules Inc.
A–274–804	731–TA–961	Carbon and Certain Alloy Steel Wire Rod/Trinidad & Tobago.	AmeriSteel.
			Birmingham Steel.
			Cascade Steel Rolling Mills.
			Connecticut Steel Corp.
			Co-Steel Raritan.
			GS Industries.
			Keystone Consolidated Industries.
			North Star Steel Texas.
			Nucor Steel-Nebraska (a division of Nucor Corp).
			Republic Technologies International.
			Rocky Mountain Steel Mills.
A–301–602	731–TA–329	Fresh Cut Flowers/Colombia	Burdette Coward.
			California Floral Council.
			Floral Trade Council.
			Florida Flower Association.
			Gold Coast Uanko Nursery.
			Hollandia Wholesale Florist.
			Manatee Fruit.
			Monterey Flower Farms.
			Pajaro Valley Greenhouses.
			Topstar Nursery.
A–307–803	731–TA–519	Gray Portland Cement and Clinker/Venezuela	Florida Crushed Stone.
			Southdown.
			Tarmac America.
A–307–805	731–TA–537	Circular Welded Nonalloy Steel Pipe/Venezuela	Allied Tube & Conduit.
			American Tube.
			Bull Moose Tube.
			Century Tube.
			CSI Tubular Products.
			Cyclops.
			Laclede Steel.
			LTV Tubular Products.
			Maruichi American.
			Sharon Tube.
			USX.
			Western Tube & Conduit.
			Wheatland Tube.
A–307–807	731–TA–570	Ferrosilicon/Venezuela	AIMCOR.
			Alabama Silicon.
			American Alloys.
			Globe Metallurgical.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A–307–820	731–TA–931	Silicomanganese/Venezuela	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers. International Union, Local 5–0639.
A–331–602	731–TA–331	Fresh Cut Flowers/Ecuador	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
A–337–803	731–TA–768	Fresh Atlantic Salmon/Chile	Atlantic Salmon of Maine. Cooke Aquaculture US. DE Salmon. Global Aqua USA. Island Aquaculture. Maine Coast Nordic. Scan Am Fish Farms. Treats Island Fisheries. Trumpet Island Salmon Farm.
A–337–804	731–TA–776	Preserved Mushrooms/Chile	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A–337–806	731–TA–948	Individually Quick Frozen Red Raspberries/Chile	A&A Berry Farms. Bahler Farms. Bear Creek Farms. David Burns. Columbia Farms. Columbia Fruit. George Culp. Dobbins Berry Farm. Enfield. Firestone Packing. George Hoffman Farms. Heckel Farms. Wendell Kreder. Curt Maberry. Maberry Packing. Mike & Jean's. Nguyen Berry Farms. Nick's Acres. North Fork. Parson Berry Farm. Pickin 'N' Pluckin. Postage Stamp Farm. Rader. RainSweet. Scenic Fruit. Silverstar Farms. Tim Straub. Thoeny Farms. Townsend. Tsugawa Farms. Updike Berry Farms. Van Laeken Farms.
A–351–503	731–TA–262	Iron Construction Castings/Brazil	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
A–351–505	731–TA–278	Malleable Cast Iron Pipe Fittings/Brazil	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U–Brand. Ward Manufacturing.
A–351–602	731–TA–308	Carbon Steel Butt-Weld Pipe Fittings/Brazil	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A–351–603	731–TA–311	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–351–605	731–TA–326	Frozen Concentrated Orange Juice/Brazil	Alcoma Packing. B&W Canning. Berry Citrus Products. Caulkins Indiantown Citrus. Citrus Belle. Citrus World. Florida Citrus Mutual.
A–351–804	731–TA–439	Industrial Nitrocellulose/Brazil	Hercules.
A–351–806	731–TA–471	Silicon Metal/Brazil	American Alloys. Globe Metallurgical. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. SiMETCO. Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538 and 12646).
A–351–809	731–TA–532	Circular Welded Nonalloy Steel Pipe/Brazil	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–351–817	731–TA–574	Cut-to-Length Carbon Steel Plate/Brazil	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–351–819	731–TA–636	Stainless Steel Wire Rod/Brazil	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–351–820	731–TA–641	Ferrosilicon/Brazil	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A–351–824	731–TA–671	Silicomanganese/Brazil	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3–639).
A–351–825	731–TA–678	Stainless Steel Bar/Brazil	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–351–826	731–TA–708	Seamless Pipe/Brazil	Koppel Steel. Quanex. Timken. United States Steel.
A–351–828	731–TA–806	Hot-Rolled Carbon Steel Flat Products/Brazil	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–351–832	731–TA–953	Carbon and Certain Alloy Steel Wire Rod/Brazil	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–351–837	731–TA–1024 ...	Prestressed Concrete Steel Wire Strand/Brazil	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–351–840	731–TA–1089 ...	Certain Orange Juice/Brazil	A Duda & Sons Inc. Alico Inc. John Barnelt.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Ben Hill Griffin Inc. Bliss Citrus. BTS A Florida General Partnership. Cain Groves. California Citrus Mutual. Cedar Haven Inc. Citrus World Inc. Clonts Groves Inc. Davis Enterprises Inc. D Edwards Dickinson. Evans Properties Inc. Florida Citrus Commission. Florida Citrus Mutual. Florida Farm Bureau Federation. Florida Fruit & Vegetable Association. Florida State of Department of Citrus. Flying V Inc. GBS Groves Inc. Graves Brothers Co. H&S Groves. Hartwell Groves Inc. Holly Hill Fruit Products Co. Jack Melton Family Inc. K–Bob Inc. L Dicks Inc. Lake Pickett Partnership Inc. Lamb Revocable Trust Gerilyn Rebecca S Lamb Trustee. Lykes Bros Inc. Martin J McKenna. Orange & Sons Inc. Osgood Groves. William W Parshall. PH Freeman & Sons. Pierie Grove. Raymond & Melissa Pierie. Roper Growers Cooperative. Royal Brothers Groves. Seminole Tribe of Florida Inc. Silverman Groves/Rilla Cooper. Smoak Groves Inc. Sorrells Groves Inc. Southern Gardens Groves Corp. Southern Gardens Processing Corp. Southern Groves Citrus. Sun Ag Inc. Sunkist Growers Inc. Texas Citrus Exchange. Texas Citrus Mutual. Texas Produce Association. Travis Wise Management Inc. Uncle Matt's Fresh Inc. Varn Citrus Growers Inc.
A–357–007	731–TA–157	Carbon Steel Wire Rod/Argentina	Atlantic Steel. Continental Steel. Georgetown Steel. North Star Steel. Raritan River Steel.
A–357–405	731–TA–208	Barbed Wire and Barbless Wire Strand/Argentina ...	CF&I Steel. Davis Walker. Forbes Steel & Wire. Oklahoma Steel Wire.
A–357–802	731–TA–409	Light-Walled Rectangular Tube/Argentina	Bull Moose Tube. Hannibal Industries. Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit.
A–357–804	731–TA–470	Silicon Metal/Argentina	American Alloys. Elkem Metals. Globe Metallurgical. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693).

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. SiMETCO. SKW Alloys. Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538 and 12646).
A–357–809	731–TA–707	Seamless Pipe/Argentina	Koppel Steel. Quanex. Timken. United States Steel.
A–357–810	731–TA–711	Oil Country Tubular Goods/Argentina	IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A–357–812	731–TA–892	Honey/Argentina	AH Meyer & Sons. Adee Honey Farms. Althoff Apiaries. American Beekeeping Federation. American Honey Producers Association. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. B Weaver Apiaries. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Bill Rhodes Honey. Richard E Blake. Curt Bronnenbery. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Charles Apiaries. Mitchell Charles. Collins Honey. Conor Apiaries. Coy's Honey Farm. Dave Nelson Apiaries. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L Emmons, Sr. Gause Honey. Gene Brandi Apiaries. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. Missouri River Honey. Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Peterson's ''Naturally Sweet'' Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Robertson Pollination Service. Robson Honey. William Robson. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. Sioux Honey Association. Smoot Honey. Solby Honey. Stahlman Apiaries. Steve E Parks Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbott's Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. Walter L Wilson Buzz 76 Apiaries. Wiebersiek Honey Farms. Wilmer Farms. Brent J Woodworth. Wooten's Golden Queens. Yaddof Apiaries.
A–357–814	731–TA–898	Hot-Rolled Steel Products/Argentina	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–401–040	AA1921–114	Stainless Steel Plate/Sweden	Jessop Steel.
A–401–601	731–TA–316	Brass Sheet and Strip/Sweden	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–401–603	731–TA–354	Stainless Steel Hollow Products/Sweden	AL Tech Specialty Steel. Allegheny Ludlum Steel. ARMCO. Carpenter Technology. Crucible Materials. Damacus Tubular Products. Specialty Tubing Group.
A–401–801	731–TA–397–A	Ball Bearings/Sweden	Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A–401–801	731–TA–397–B	Cylindrical Roller Bearings/Sweden	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–401–805	731–TA–586	Cut-to-Length Carbon Steel Plate/Sweden	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–401–806	731–TA–774	Stainless Steel Wire Rod/Sweden	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–401–808	731–TA–1087 ...	Purified Carboxymethylcellulose/Sweden	Aqualon Co a Division of Hercules Inc.
A–403–801	731–TA–454	Fresh and Chilled Atlantic Salmon/Norway	Heritage Salmon. The Coalition for Fair Atlantic Salmon Trade.
A–405–802	731–TA–576	Cut-to-Length Carbon Steel Plate/Finland	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–405–803	731–TA–1084 ...	Purified Carboxymethylcellulose/Finland	Aqualon Co a Division of Hercules Inc.
A–412–801	731–TA–399–A	Ball Bearings/United Kingdom	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			MPB. Rexnord Inc. Rollway Bearings. Torrington.
A–412–801	731–TA–399–B	Cylindrical Roller Bearings/United Kingdom	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–412–803	731–TA–443	Industrial Nitrocellulose/United Kingdom	Hercules.
A–412–805	731–TA–468	Sodium Thiosulfate/United Kingdom	Calabrian.
A–412–814	731–TA–587	Cut-to-Length Carbon Steel Plate/United Kingdom ..	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–412–818	731–TA–804	Stainless Steel Sheet and Strip/United Kingdom	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–412–822	731–TA–918	Stainless Steel Bar/United Kingdom	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–421–701	731–TA–380	Brass Sheet and Strip/Netherlands	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. North Coast Brass & Copper. Olin. Pegg Metals. Revere Copper Products. United Steelworkers of America.
A–421–804	731–TA–608	Cold-Rolled Carbon Steel Flat Products/Netherlands	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–421–805	731–TA–652	Aramid Fiber/Netherlands	E I du Pont de Nemours.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–421–807	731–TA–903	Hot-Rolled Steel Products/Netherlands	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–421–811	731–TA–1086 ...	Purified Carboxymethylcellulose/Netherlands	Aqualon Co a Division of Hercules Inc.
A–423–077	AA1921–198	Sugar/Belgium	Florida Sugar Marketing and Terminal Association.
A–423–602	731–TA–365	Industrial Phosphoric Acid/Belgium	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
A–423–805	731–TA–573	Cut-to-Length Carbon Steel Plate/Belgium	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–423–808	731–TA–788	Stainless Steel Plate in Coils/Belgium	Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–427–001	731–TA–44	Sorbitol/France	Lonza. Pfizer.
A–427–009	731–TA–96	Industrial Nitrocellulose/France	Hercules.
A–427–078	AA1921–199	Sugar/France	Florida Sugar Marketing and Terminal Association.
A–427–098	731–TA–25	Anhydrous Sodium Metasilicate/France	PQ.
A–427–602	731–TA–313	Brass Sheet and Strip/France	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–427–801	731–TA–392–A	Ball Bearings/France	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A–427–801	731–TA–392–B	Cylindrical Roller Bearings/France	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–427–801	731–TA–392–C	Spherical Plain Bearings/France	Barden Corp. Emerson Power Transmission.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Kubar Bearings. McGill Manufacturing Co. Rexnord Inc. Rollway Bearings. Torrington.
A–427–804	731–TA–553	Hot-Rolled Lead and Bismuth Carbon Steel Products/France.	Bethlehem Steel. Inland Steel Industries. USS/Kobe Steel.
A–427–808	731–TA–615	Corrosion-Resistant Carbon Steel Flat Products/France.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–427–811	731–TA–637	Stainless Steel Wire Rod/France	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–427–814	731–TA–797	Stainless Steel Sheet and Strip/France	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–427–816	731–TA–816	Cut-to-Length Carbon Steel Plate/France	Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
A–427–818	731–TA–909	Low Enriched Uranium/France	United States Enrichment Corp. USEC Inc.
A–427–820	731–TA–913	Stainless Steel Bar/France	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–428–082	AA1921–200	Sugar/Germany	Florida Sugar Marketing and Terminal Association.
A–428–602	731–TA–317	Brass Sheet and Strip/Germany	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–428–801	731–TA–391–A	Ball Bearings/Germany	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			MPB. Rexnord Inc. Rollway Bearings. Torrington.
A–428–801	731–TA–391–B	Cylindrical Roller Bearings/Germany	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–428–801	731–TA–391–C	Spherical Plain Bearings/Germany	Barden Corp. Emerson Power Transmission. Rollway Bearings. Torrington.
A–428–802	731–TA–419	Industrial Belts/Germany	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–428–803	731–TA–444	Industrial Nitrocellulose/Germany	Hercules.
A–428–807	731–TA–465	Sodium Thiosulfate/Germany	Calabrian.
A–428–814	731–TA–604	Cold-Rolled Carbon Steel Flat Products/Germany ...	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–428–815	731–TA–616	Corrosion-Resistant Carbon Steel Flat Products/ Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–428–816	731–TA–578	Cut-to-Length Carbon Steel Plate/Germany	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–428–820	731–TA–709	Seamless Pipe/Germany	Koppel Steel. Quanex. Timken. United States Steel.
A–428–821	731–TA–736	Large Newspaper Printing Presses/Germany	Rockwell Graphics Systems.
A–428–825	731–TA–798	Stainless Steel Sheet and Strip/Germany	Allegheny Ludlum. Armco Steel. Bethlehem Steel.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–428–830	731–TA–914	Stainless Steel Bar/Germany	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–437–601	731–TA–341	Tapered Roller Bearings/Hungary	L&S Bearing. Timken. Torrington.
A–437–804	731–TA–426	Sulfanilic Acid/Hungary	Nation Ford Chemical.
A–447–801	731–TA–340C ..	Solid Urea/Estonia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–449–804	731–TA–878	Steel Concrete Reinforcing Bar/Latvia	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI–Chaparral Steel Co.
A–451–801	731–TA–340D ..	Solid Urea/Lithuania	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–455–802	731–TA–583	Cut-to-Length Carbon Steel Plate/Poland	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–455–803	731–TA–880	Steel Concrete Reinforcing Bar/Poland	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Riverview Steel.
			Sheffield Steel.
			TAMCO.
			TXI–Chaparral Steel Co.
A–469–007	731–TA–126	Potassium Permanganate/Spain	Carus Chemical.
A–469–803	731–TA–585	Cut-to-Length Carbon Steel Plate/Spain	Bethlehem Steel.
			California Steel Industries.
			Geneva Steel.
			Gulf States Steel.
			Inland Steel Industries.
			Lukens Steel.
			National Steel.
			Nextech.
			Sharon Steel.
			Theis Precision Steel.
			Thompson Steel.
			US Steel.
			United Steelworkers of America.
A–469–805	731–TA–682	Stainless Steel Bar/Spain	AL Tech Specialty Steel.
			Carpenter Technology.
			Crucible Specialty Metals.
			Electralloy.
			Republic Engineered Steels.
			Slater Steels.
			Talley Metals Technology.
			United Steelworkers of America.
A–469–807	731–TA–773	Stainless Steel Wire Rod/Spain	AL Tech Specialty Steel.
			Carpenter Technology.
			Republic Engineered Steels.
			Talley Metals Technology.
			United Steelworkers of America.
A–469–810	731–TA–890	Stainless Steel Angle/Spain	Slater Steels.
			United Steelworkers of America.
A–469–814	731–TA–1083 ...	Chlorinated Isocyanurates/Spain	BioLab Inc.
			Clearon Corp.
			Occidental Chemical Corp.
A–471–806	731–TA–427	Sulfanilic Acid/Portugal	Nation Ford Chemical.
A–475–059	AA1921–167	Pressure-Sensitive Plastic Tape/Italy	Minnesota Mining & Manufacturing.
A–475–601	731–TA–314	Brass Sheet and Strip/Italy	Allied Industrial Workers of America.
			American Brass.
			Bridgeport Brass.
			Chase Brass & Copper.
			Hussey Copper.
			International Association of Machinists & Aerospace Workers.
			Mechanics Educational Society of America (Local 56).
			The Miller Company.
			Olin.
			Revere Copper Products.
			United Steelworkers of America.
A–475–703	731–TA–385	Granular Polytetrafluoroethylene/Italy	E I du Pont de Nemours.
			ICI Americas.
A–475–801	731–TA–393–A	Ball Bearings/Italy	Barden Corp.
			Emerson Power Transmission.
			Kubar Bearings.
			McGill Manufacturing Co.
			MPB.
			Rexnord Inc.
			Rollway Bearings.
			Torrington.
A–475–801	731–TA–393–B	Cylindrical Roller Bearings/Italy	Barden Corp.
			Emerson Power Transmission.
			MPB.
			Rollway Bearings.
			Torrington.
A–475–802	731–TA–413	Industrial Belts/Italy	The Gates Rubber Company.
			The Goodyear Tire and Rubber Company.
A–475–811	731–TA–659	Grain-Oriented Silicon Electrical Steel/Italy	Allegheny Ludlum.
			Armco Steel.
			Butler Armco Independent Union.
			United Steelworkers of America.
			Zanesville Armco Independent Union.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–475–814	731–TA–710	Seamless Pipe/Italy	Koppel Steel. Quanex. Timken. United States Steel.
A–475–816	731–TA–713	Oil Country Tubular Goods/Italy	Bellville Tube. IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A–475–818	731–TA–734	Pasta/Italy	A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
A–475–820	731–TA–770	Stainless Steel Wire Rod/Italy	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–475–822	731–TA–790	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–475–824	731–TA–799	Stainless Steel Sheet and Strip/Italy	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–475–826	731–TA–819	Cut-to-Length Carbon Steel Plate/Italy	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
A–475–828	731–TA–865	Stainless Steel Butt-Weld Pipe Fittings/Italy	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–475–829	731–TA–915	Stainless Steel Bar/Italy	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–479–801	731–TA–445	Industrial Nitrocellulose/Yugoslavia	Hercules.
A–484–801	731–TA–406	Electrolytic Manganese Dioxide/Greece	Chemetals. Kerr-McGee. Rayovac.
A–485–601	731–TA–339	Solid Urea/Romania	Agrico Chemical. American Cyanamid. CF Industries.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–485–602	731–TA–345	Tapered Roller Bearings/Romania	L&S Bearing. Timken. Torrington.
A–485–801	731–TA–395	Ball Bearings/Romania	Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A–485–803	731–TA–584	Cut-to-Length Carbon Steel Plate/Romania	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–485–805	731–TA–849	Small-Diameter Carbon Steel Seamless Pipe/Romania.	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
A–485–806	731–TA–904	Hot-Rolled Steel Products/Romania	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–489–501	731–TA–273	Welded Carbon Steel Pipe and Tube/Turkey	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR–Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–489–602	731–TA–364	Aspirin/Turkey	Dow Chemical. Monsanto. Norwich-Eaton.
A–489–805	731–TA–735	Pasta/Turkey	A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
A–489–807	731–TA–745	Steel Concrete Reinforcing Bar/Turkey	AmeriSteel. Auburn Steel. Birmingham Steel. Commercial Metals. Marion Steel. New Jersey Steel.
A–507–502	731–TA–287	Raw In-Shell Pistachios/Iran	Blackwell Land. California Pistachio Orchard. Keenan Farms. Kern Pistachio Hulling & Drying. Los Ranchos de Poco Pedro. Pistachio Producers of California. TM Duche Nut.
A–508–604	731–TA–366	Industrial Phosphoric Acid/Israel	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
A–533–502	731–TA–271	Welded Carbon Steel Pipe and Tube/India	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR–Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A–533–806	731–TA–561	Sulfanilic Acid/India	R–M Industries.
A–533–808	731–TA–638	Stainless Steel Wire Rod/India	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–533–809	731–TA–639	Forged Stainless Steel Flanges/India	Gerlin. Ideal Forging. Maass Flange. Markovitz Enterprises.
A–533–810	731–TA–679	Stainless Steel Bar/India	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–533–813	731–TA–778	Preserved Mushrooms/India	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A–533–817	731–TA–817	Cut-to-Length Carbon Steel Plate/India	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
A–533–820	731–TA–900	Hot-Rolled Steel Products/India	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–533–823	731–TA–929	Silicomanganese/ndia	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639.
A–533–824	731–TA–933	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/India.	DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
A–533–828	731–TA–1025 ...	Prestressed Concrete Steel Wire Strand/India	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–533–838	731–TA–1061 ...	Carbazole Violet Pigment 23/India	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
A–533–843	731–TA–1096 ...	Certain Lined Paper School Supplies/India	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (USW).
A–538–802	731–TA–514	Cotton Shop Towels/Bangladesh	Milliken.
A–549–502	731–TA–252	Welded Carbon Steel Pipe and Tube/Thailand	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Kaiser Steel.
			Laclede Steel.
			Maruichi American.
			Maverick Tube.
			Merchant Metals.
			Phoenix Steel.
			Pittsburgh Tube.
			Quanex.
			Sharon Tube.
			Southwestern Pipe.
			UNR–Leavitt.
			Welded Tube.
			Western Tube & Conduit.
			Wheatland Tube.
A–549–601	731–TA–348	Malleable Cast Iron Pipe Fittings/Thailand	Grinnell.
			Stanley G Flagg.
			Stockham Valves & Fittings.
			U–Brand.
			Ward Manufacturing.
A–549–807	731–TA–521	Carbon Steel Butt-Weld Pipe Fittings/Thailand	Hackney.
			Ladish.
			Mills Iron Works.
			Steel Forgings.
			Tube Forgings of America.
A–549–812	731–TA–705	Furfuryl Alcohol/Thailand	QO Chemicals.
A–549–813	731–TA–706	Canned Pineapple/Thailand	International Longshoreman's and Warehouseman's Union.
			Maui Pineapple.
A–549–817	731–TA–907	Hot-Rolled Steel Products/Thailand	Bethlehem Steel.
			Gallatin Steel.
			Independent Steelworkers.
			IPSCO.
			LTV Steel.
			National Steel.
			Nucor.
			Rouge Steel Co.
			Steel Dynamics.
			US Steel.
			United Steelworkers of America.
			WCI Steel Inc.
			Weirton Steel.
			Wheeling-Pittsburgh Steel Corp.
A–549–820	731–TA–1028 ...	Prestressed Concrete Steel Wire Strand/Thailand ...	American Spring Wire Corp.
			Insteel Wire Products Co.
			Sivaco Georgia LLC.
			Strand Tech Martin Inc.
			Sumiden Wire Products Corp.
A–549–821	731–TA–1045 ...	Polyethylene Retail Carrier Bags/Thailand	Aargus Plastics Inc.
			Advance Polybags Inc.
			Advance Polybags (Nevada) Inc.
			Advance Polybags (Northeast) Inc.
			Alpha Industries Inc.
			Alpine Plastics Inc.
			Ampac Packaging LLC.
			API Enterprises Inc.
			Command Packaging.
			Continental Poly Bags Inc.
			Durabag Co Inc.
			Europackaging LLC.
			Genpak LLC (formerly Continental Superbag LLC).
			Genpak LLC (formerly Strout Plastics).
			Hilex Poly Co LLC.
			Inteplast Group Ltd.
			PCL Packaging Inc.
			Poly-Pak Industries Inc.
			Roplast Industries Inc.
			Superbag Corp.
			Unistar Plastics LLC.
			Vanguard Plastics Inc.
			VS Plastics LLC.
A–552–801	731–TA–1012 ...	Certain Frozen Fish Fillets/Vietnam	America's Catch Inc.
			Aquafarms Catfish Inc.
			Carolina Classics Catfish Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Catfish Farmers of America. Consolidated Catfish Companies Inc. Delta Pride Catfish Inc. Fish Processors Inc. Guidry's Catfish Inc. Haring's Pride Catfish. Harvest Select Catfish (Alabama Catfish Inc). Heartland Catfish Co (TT&W Farm Products Inc). Prairie Lands Seafood (Illinois Fish Farmers Cooperative). Pride of the Pond. Pride of the South Catfish Inc. Prime Line Inc. Seabrook Seafood Inc. Seacat (Arkansas Catfish Growers). Simmons Farm Raised Catfish Inc. Southern Pride Catfish LLC. Verret Fisheries Inc.
A–557–805	731–TA–527	Extruded Rubber Thread/Malaysia	Globe Manufacturing. North American Rubber Thread.
A–557–809	731–TA–866	Stainless Steel Butt-Weld Pipe Fittings/Malaysia	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–557–813	731–TA–1044 ...	Polyethylene Retail Carrier Bags/Malaysia	Aargus Plastics Inc. Advance Polybags Inc. Advance Polybags (Nevada) Inc. Advance Polybags (Northeast) Inc. Alpha Industries Inc. Alpine Plastics Inc. Ampac Packaging LLC. API Enterprises Inc. Command Packaging. Continental Poly Bags Inc. Durabag Co Inc. Europackaging LLC. Genpak LLC (formerly Continental Superbag LLC). Genpak LLC (formerly Strout Plastics). Hilex Poly Co LLC. Inteplast Group Ltd. PCL Packaging Inc. Poly-Pak Industries Inc. Roplast Industries Inc. Superbag Corp. Unistar Plastics LLC. Vanguard Plastics Inc. VS Plastics LLC.
A–559–502	731–TA–296	Small Diameter Standard and Rectangular Pipe and Tube/Singapore.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Cyclops. Hannibal Industries. Laclede Steel. Pittsburgh Tube. Sharon Tube. Western Tube & Conduit. Wheatland Tube.
A–559–601	731–TA–370	Color Picture Tubes/Singapore	Industrial Union Department, AFL–CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America. Zenith Electronics.
A–559–801	731–TA–396	Ball Bearings/Singapore	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Rexnord Inc.
			Rollway Bearings.
			Torrington.
A–559–802	731–TA–415	Industrial Belts/Singapore	The Gates Rubber Company.
			The Goodyear Tire and Rubber Company.
A–560–801	731–TA–742	Melamine Institutional Dinnerware/Indonesia	Carlisle Food Service Products.
			Lexington United.
			Plastics Manufacturing.
A–560–802	731–TA–779	Preserved Mushrooms/Indonesia	LK Bowman.
			Modern Mushroom Farms.
			Monterey Mushrooms.
			Mount Laurel Canning.
			Mushroom Canning.
			Southwood Farms.
			Sunny Dell Foods.
			United Canning.
A–560–803	731–TA–787	Extruded Rubber Thread/Indonesia	North American Rubber Thread.
A–560–805	731–TA–818	Cut-to-Length Carbon Steel Plate/Indonesia	Bethlehem Steel.
			CitiSteel USA Inc.
			Geneva Steel.
			Gulf States Steel.
			IPSCO Steel.
			National Steel.
			Tuscaloosa Steel.
			US Steel.
			United Steelworkers of America.
A–560–811	731–TA–875	Steel Concrete Reinforcing Bar/Indonesia	AB Steel Mill Inc.
			AmeriSteel.
			Birmingham Steel.
			Border Steel.
			Cascade Steel Rolling Mills Inc.
			CMC Steel Group.
			Co-Steel Inc.
			Marion Steel.
			North Star Steel Co.
			Nucor Steel.
			Rebar Trade Action Coalition.
			Riverview Steel.
			Sheffield Steel.
			TAMCO.
			TXI–Chaparral Steel Co.
A–560–812	731–TA–901	Hot-Rolled Steel Products/Indonesia	Bethlehem Steel.
			Gallatin Steel.
			Independent Steelworkers.
			IPSCO.
			LTV Steel.
			National Steel.
			Nucor.
			Rouge Steel Co.
			Steel Dynamics.
			US Steel.
			United Steelworkers of America.
			WCI Steel Inc.
			Weirton Steel.
			Wheeling-Pittsburgh Steel Corp.
A–560–815	731–TA–957	Carbon and Certain Alloy Steel Wire Rod/Indonesia	AmeriSteel.
			Birmingham Steel.
			Cascade Steel Rolling Mills.
			Connecticut Steel Corp.
			Co-Steel Raritan.
			GS Industries.
			Keystone Consolidated Industries.
			North Star Steel Texas.
			Nucor Steel-Nebraska (a division of Nucor Corp).
			Republic Technologies International.
			Rocky Mountain Steel Mills.
A–560–818	731–TA–1097 ...	Certain Lined Paper School Supplies/Indonesia	Fay Paper Products Inc.
			MeadWestvaco Consumer & Office Products.
			Norcom Inc.
			Pacon Corp.
			Roaring Spring Blank Book Co.
			Top Flight Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (USW).
A–565–801	731–TA–867	Stainless Steel Butt-Weld Pipe Fittings/Philippines ..	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–570–001	731–TA–125	Potassium Permanganate/China	Carus Chemical.
A–570–002	731–TA–130	Chloropicrin/China	LCP Chemicals & Plastics. Niklor Chemical.
A–570–003	731–TA–103	Cotton Shop Towels/China	Milliken. Texel Industries. Wikit.
A–570–007	731–TA–149	Barium Chloride/China	Chemical Products.
A–570–101	731–TA–101	Greige Polyester Cotton Printcloth/China	Alice Manufacturing. Clinton Mills. Dan River. Greenwood Mills. Hamrick Mills. M Lowenstein. Mayfair Mills. Mount Vernon Mills.
A–570–501	731–TA–244	Natural Bristle Paint Brushes/China	Baltimore Brush. Bestt Liebco. Elder & Jenks. EZ Paintr. H&G Industries. Joseph Lieberman & Sons. Purdy. Rubberset. Thomas Paint Applicators. Wooster Brush.
A–570–502	731–TA–265	Iron Construction Castings/China	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
A–570–504	731–TA–282	Petroleum Wax Candles/China	The AI Root Company. Candle Artisans Inc. Candle-Lite. Cathedral Candle. Colonial Candle of Cape Cod. General Wax & Candle. Lenox Candles. Lumi-Lite Candle. Meuch-Kreuzer Candle. National Candle Association. Will & Baumer. WNS.
A–570–506	731–TA–298	Porcelain-on-Steel Cooking Ware/China	General Housewares.
A–570–601	731–TA–344	Tapered Roller Bearings/China	L&S Bearing. Timken. Torrington.
A–570–802	731–TA–441	Industrial Nitrocellulose/China	Hercules.
A–570–803	731–TA–457–A	Axes and Adzes/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–B	Bars and Wedges/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–C	Hammers and Sledges/China	Council Tool Co Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Warwood Tool.
			Woodings-Verona.
A–570–803	731–TA–457–D	Picks and Mattocks/China	Council Tool Co Inc.
			Warwood Tool.
			Woodings-Verona.
A–570–804	731–TA–464	Sparklers/China	BJ Alan.
			Diamond Sparkler.
			Elkton Sparkler.
A–570–805	731–TA–466	Sodium Thiosulfate/China	Calabrian.
A–570–806	731–TA–472	Silicon Metal/China	American Alloys.
			Elkem Metals.
			Globe Metallurgical.
			International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693).
			Oil, Chemical and Atomic Workers (Local 389).
			Silicon Metaltech.
			SiMETCO.
			SKW Alloys.
			Textile Processors, Service Trades, Health Care.
			Professional and Technical Employees (Local 60).
			United Steelworkers of America (Locals 5171, 8538 and 12646).
A–570–808	731–TA–474	Chrome-Plated Lug Nuts/China	Consolidated International Automotive.
			Key Manufacturing.
			McGard.
A–570–811	731–TA–497	Tungsten Ore Concentrates/China	Curtis Tungsten.
			US Tungsten.
A–570–814	731–TA–520	Carbon Steel Butt-Weld Pipe Fittings/China	Hackney.
			Ladish.
			Mills Iron Works.
			Steel Forgings.
			Tube Forgings of America.
A–570–815	731–TA–538	Sulfanilic Acid/China	R–M Industries.
A–570–819	731–TA–567	Ferrosilicon/China	AIMCOR.
			Alabama Silicon.
			American Alloys.
			Globe Metallurgical.
			Oil, Chemical and Atomic Workers (Local 389).
			Silicon Metaltech.
			United Autoworkers of America (Local 523).
			United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A–570–822	731–TA–624	Helical Spring Lock Washers/China	Illinois Tool Works.
A–570–825	731–TA–653	Sebacic Acid/China	Union Camp.
A–570–826	731–TA–663	Paper Clips/China	ACCO USA.
			Labelon/Noesting.
			TRICO Manufacturing.
A–570–827	731–TA–669	Cased Pencils/China	Blackfeet Indian Writing Instrument.
			Dixon-Ticonderoga.
			Empire Berol.
			Faber-Castell.
			General Pencil.
			JR Moon Pencil.
			Musgrave Pen & Pencil.
			Panda.
			Writing Instrument Manufacturers Association, Pencil Section.
A–570–828	731–TA–672	Silicomanganese/China	Elkem Metals.
			Oil, Chemical and Atomic Workers (Local 3–639).
A–570–830	731–TA–677	Coumarin/China	Rhone-Poulenc.
A–570–831	731–TA–683	Fresh Garlic/China	A&D Christopher Ranch.
			Belridge Packing.
			Colusa Produce.
			Denice & Filice Packing.
			El Camino Packing.
			The Garlic Company.
			Vessey and Company.
A–570–832	731–TA–696	Pure Magnesium/China	Dow Chemical.
			International Union of Operating Engineers (Local 564).
			Magnesium Corporation of America.
			United Steelworkers of America (Local 8319).
A–570–835	731–TA–703	Furfuryl Alcohol/China	QO Chemicals.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–570–836	731–TA–718	Glycine/China	Chattem. Hampshire Chemical.
A–570–840	731–TA–724	Manganese Metal/China	Elkem Metals. Kerr-McGee.
A–570–842	731–TA–726	Polyvinyl Alcohol/China	Air Products and Chemicals.
A–570–844	731–TA–741	Melamine Institutional Dinnerware/China	Carlisle Food Service Products. Lexington United. Plastics Manufacturing.
A–570–846	731–TA–744	Brake Rotors/China	Brake Parts. Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers. Iroquois Tool Systems. Kelsey Hayes. Kinetic Parts Manufacturing. Overseas Auto Parts. Wagner Brake.
A–570–847	731–TA–749	Persulfates/China	FMC.
A–570–848	731–TA–752	Crawfish Tail Meat/China	A&S Crawfish. Acadiana Fisherman's Co-Op. Arnaudville Seafood. Atchafalaya Crawfish Processors. Basin Crawfish Processors. Bayou Land Seafood. Becnel's Meat & Seafood. Bellard's Poultry & Crawfish. Bonanza Crawfish Farm. Cajun Seafood Distributors. Carl's Seafood. Catahoula Crawfish. Choplin SFD. CJ's Seafood & Purged Crawfish. Clearwater Crawfish. Crawfish Processors Alliance. Harvey's Seafood. Lawtell Crawfish Processors. Louisiana Premium Seafoods. Louisiana Seafood. LT West. Phillips Seafood. Prairie Cajun Wholesale Seafood Dist. Riceland Crawfish. Schexnider Crawfish. Seafood International Distributors. Sylvester's Processors. Teche Valley Seafood.
A–570–849	731–TA–753	Cut-to-Length Carbon Steel Plate/China	Acme Metals Inc. Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Lukens Inc. National Steel. US Steel. United Steelworkers of America.
A–570–850	731–TA–757	Collated Roofing Nails/China	Illinois Tool Works. International Staple and Machines. Stanley-Bostitch.
A–570–851	731–TA–777	Preserved Mushrooms/China	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A–570–852	731–TA–814	Creatine Monohydrate/China	Pfanstiehl Laboratories.
A–570–853	731–TA–828	Aspirin/China	Rhodia.
A–570–855	731–TA–841	Non-Frozen Apple Juice Concentrate/China	Coloma Frozen Foods. Green Valley Apples of California. Knouse Foods Coop. Mason County Fruit Packers Coop. Tree Top.
A–570–856	731–TA–851	Synthetic Indigo/China	Buffalo Color.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			United Steelworkers of America.
A–570–860	731–TA–874	Steel Concrete Reinforcing Bar/China	AB Steel Mill Inc.
			AmeriSteel.
			Auburn Steel.
			Birmingham Steel.
			Border Steel.
			Cascade Steel Rolling Mills Inc.
			CMC Steel Group.
			Co-Steel Inc.
			Marion Steel.
			North Star Steel Co.
			Nucor Steel.
			Rebar Trade Action Coalition.
			Riverview Steel.
			Sheffield Steel.
			TAMCO.
			TXI–Chaparral Steel Co.
A–570–862	731–TA–891	Foundry Coke/China	ABC Coke.
			Citizens Gas and Coke Utility.
			Erie Coke.
			Sloss Industries Corp.
			Tonawanda Coke.
			United Steelworkers of America.
A–570–863	731–TA–893	Honey/China	AH Meyer & Sons.
			Adee Honey Farms.
			Althoff Apiaries.
			American Beekeeping Federation.
			American Honey Producers Association.
			Anderson Apiaries.
			Arroyo Apiaries.
			Artesian Honey Producers.
			B Weaver Apiaries.
			Bailey Enterprises.
			Barkman Honey.
			Basler Honey Apiary.
			Beals Honey.
			Bears Paw Apiaries.
			Beaverhead Honey.
			Bee Biz.
			Bee Haven Honey.
			Belliston Brothers Apiaries.
			Big Sky Honey.
			Bill Rhodes Honey.
			Richard E Blake.
			Curt Bronnenbery.
			Brown's Honey Farms.
			Brumley's Bees.
			Buhmann Apiaries.
			Carys Honey Farms.
			Chaparrel Honey.
			Charles Apiaries.
			Mitchell Charles.
			Collins Honey.
			Conor Apiaries.
			Coy's Honey Farm.
			Dave Nelson Apiaries.
			Delta Bee.
			Eisele's Pollination & Honey.
			Ellingsoa's.
			Elliott Curtis & Sons.
			Charles L Emmons, Sr.
			Gause Honey.
			Gene Brandi Apiaries.
			Griffith Honey.
			Haff Apiaries.
			Hamilton Bee Farms.
			Hamilton Honey.
			Happie Bee.
			Harvest Honey.
			Harvey's Honey.
			Hiatt Honey.
			Hoffman Honey.
			Hollman Apiaries.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Honey House. Honeybee Apiaries. Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. Missouri River Honey. Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Peterson's ''Naturally Sweet'' Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Robertson Pollination Service. Robson Honey. William Robson. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. Sioux Honey Association. Smoot Honey. Solby Honey. Stahlman Apiaries. Steve E Parks Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbott's Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. Walter L Wilson Buzz 76 Apiaries. Wiebersiek Honey Farms. Wilmer Farms. Brent J Woodworth. Wooten's Golden Queens. Yaddof Apiaries.
A–570–864	731–TA–895	Pure Magnesium (Granular)/China	Concerned Employees of Northwest Alloys. Magnesium Corporation of America. United Steelworkers of America. United Steelworkers of America (Local 8319).
A–570–865	731–TA–899	Hot-Rolled Steel Products/China	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Steel Dynamics.
			US Steel.
			United Steelworkers of America.
			WCI Steel Inc.
			Weirton Steel.
			Wheeling-Pittsburgh Steel Corp.
A–570–866	731–TA–921	Folding Gift Boxes/China	Field Container.
			Harvard Folding Box.
			Sterling Packaging.
			Superior Packaging.
A–570–867	731–TA–922	Automotive Replacement Glass Windshields/China	PPG Industries.
			Safelite Glass.
			Viracon/Curvlite Inc.
			Visteon Corporation.
A–570–868	731–TA–932	Folding Metal Tables and Chairs/China	Krueger International.
			McCourt Manufacturing.
			Meco.
			Virco Manufacturing.
A–570–873	731–TA–986	Ferrovanadium/China	Bear Metallurgical Co.
			Shieldalloy Metallurgical Corp.
A–570–875	731–TA–990	Non-Malleable Cast Iron Pipe Fittings/China	Anvil International Inc.
			Buck Co Inc.
			Frazier & Frazier Industries.
			Ward Manufacturing Inc.
A–570–877	731–TA–1010	Lawn and Garden Steel Fence Posts/China	Steel City Corp.
A–570–878	731–TA–1013	Saccharin/China	PMC Specialties Group Inc.
A–570–879	731–TA–1014	Polyvinyl Alcohol/China	Celanese Ltd.
			E I du Pont de Nemours & Co.
A–570–880	731–TA–1020	Barium Carbonate/China	Chemical Products Corp.
A–570–881	731–TA–1021	Malleable Iron Pipe Fittings/China	Anvil International Inc.
			Buck Co Inc.
			Ward Manufacturing Inc.
A–570–882	731–TA–1022	Refined Brown Aluminum Oxide/China	C–E Minerals.
			Treibacher Schleifmittel North America Inc.
			Washington Mills Co Inc.
A–570–884	731–TA–1034	Certain Color Television Receivers/China	Five Rivers Electronic Innovations LLC.
			Industrial Division of the Communications Workers of America (IUECWA).
			International Brotherhood of Electrical Workers (IBEW).
A–570–886	731–TA–1043	Polyethylene Retail Carrier Bags/China	Aargus Plastics Inc.
			Advance Polybags Inc.
			Advance Polybags (Nevada) Inc.
			Advance Polybags (Northeast) Inc.
			Alpha Industries Inc.
			Alpine Plastics Inc.
			Ampac Packaging LLC.
			API Enterprises Inc.
			Command Packaging.
			Continental Poly Bags Inc.
			Durabag Co Inc.
			Europackaging LLC.
			Genpak LLC (formerly Continental Superbag LLC).
			Genpak LLC (formerly Strout Plastics).
			Hilex Poly Co LLC.
			Inteplast Group Ltd.
			PCL Packaging Inc.
			Poly-Pak Industries Inc.
			Roplast Industries Inc.
			Superbag Corp.
			Unistar Plastics LLC.
			Vanguard Plastics Inc.
			VS Plastics LLC.
A–570–887	731–TA–1046	Tetrahydrofurfuryl Alcohol/China	Penn Specialty Chemicals Inc.
A–570–888	731–TA–1047	Ironing Tables and Certain Parts Thereof/China	Home Products International Inc.
A–570–890	731–TA–1058	Wooden Bedroom Furniture/China	American Drew.
			American of Martinsville.
			Bassett Furniture Industries Inc.
			Bebe Furniture.
			Carolina Furniture Works Inc.
			Carpenters Industrial Union Local 2093.
			Century Furniture Industries.
			Country Craft Furniture Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Craftique. Crawford Furniture Mfg Corp. EJ Victor Inc. Forest Designs. Harden Furniture Inc. Hart Furniture. Higdon Furniture Co. IUE Industrial Division of CWA Local 82472. Johnston Tombigbee Furniture Mfg Co. Kincaid Furniture Co Inc. L & J G Stickley Inc. Lea Industries. Michels & Co. MJ Wood Products Inc. Mobel Inc. Modern Furniture Manufacturers Inc. Moosehead Mfg Co. Oakwood Interiors. O'Sullivan Industries Inc. Pennsylvania House Inc. Perdues Inc. Sandberg Furniture Mfg Co Inc. Stanley Furniture Co Inc. Statton Furniture Mfg Assoc. T Copeland & Sons. Teamsters, Chauffeurs, Warehousemen and Helpers Local 991. Tom Seely Furniture. UBC Southern Council of Industrial Workers Local Union 2305. United Steelworkers of America Local 193U. Vaughan Furniture Co Inc. Vaughan-Bassett Furniture Co Inc. Vermont Tubbs. Webb Furniture Enterprises Inc.
A–570–891	731–TA–1059 ...	Hand Trucks and Certain Parts Thereof/China	B&P Manufacturing. Gleason Industrial Products Inc. Harper Trucks Inc. Magline Inc. Precision Products Inc. Wesco Industrial Products Inc.
A–570–892	731–TA–1060 ...	Carbazole Violet Pigment 23/China	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
A–570–894	731–TA–1070 ...	Certain Tissue Paper Products/China	American Crepe Corp. Cindus Corp. Eagle Tissue LLC. Flower City Tissue Mills Co and Subsidiary. Garlock Printing & Converting Corp. Green Mtn Specialties Inc. Hallmark Cards Inc. Pacon Corp. Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL–CIO ("PACE"). Paper Service LTD. Putney Paper. Seaman Paper Co of MA Inc.
A–570–895	731–TA–1069 ...	Certain Crepe Paper Products/China	American Crepe Corp. Cindus Corp. Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL–CIO ("PACE"). Seaman Paper Co of MA Inc.
A–570–896	731–TA–1071 ...	Alloy Magnesium/China	Garfield Alloys Inc. Glass, Molders, Pottery, Plastics & Allied Workers International Local 374. Halaco Engineering. MagReTech Inc. United Steelworkers of America Local 8319. US Magnesium LLC.
A–570–899	731–TA–1091 ...	Artists' Canvas/China	Duro Art Industries. ICG/Holliston Mills Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Signature World Class Canvas LLC.
			Tara Materials Inc.
A–570–898	731–TA–1082	Chlorinated Isocyanurates/China	BioLab Inc.
			Clearon Corp.
			Occidental Chemical Corp.
A–570–901	731–TA–1095	Certain Lined Paper School Supplies/China	Fay Paper Products Inc.
			MeadWestvaco Consumer & Office Products.
			Norcom Inc.
			Pacon Corp.
			Roaring Spring Blank Book Co.
			Top Flight Inc.
			United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (USW).
A–570–904	731–TA–1103	Certain Activated Carbon/China	Calgon Carbon Corp.
			Norit Americas Inc.
A–570–905	731–TA–1104	Certain Polyester Staple Fiber/China	DAK Americas LLC.
			Formed Fiber Techmologies LLC.
			Nan Ya Plastics Corp America.
			Palmetto Synthetics LLC.
			United Synthetics Inc (USI).
			Wellman Inc.
A–570–908	731–TA–1110	Soium Hexametaphosphate (SHMP)/China	ICL Performance Products LP.
			Innophos Inc.
A–580–008	731–TA–134	Color Television Receivers/Korea	Committee to Preserve American Color Television.
			Independent Radionic Workers of America.
			Industrial Union Department, AFL–CIO.
			International Brotherhood of Electrical Workers.
			International Union of Electrical, Radio and Machine Workers.
A–580–507	731–TA–279	Malleable Cast Iron Pipe Fittings/Korea	Grinnell.
			Stanley G Flagg.
			Stockham Valves & Fittings.
			U–Brand.
			Ward Manufacturing.
A–580–601	731–TA–304	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.	Farberware.
			Regal Ware.
			Revere Copper & Brass.
			WearEver/Proctor Silex.
A–580–603	731–TA–315	Brass Sheet and Strip/Korea	Allied Industrial Workers of America.
			American Brass.
			Bridgeport Brass.
			Chase Brass & Copper.
			Hussey Copper.
			International Association of Machinists & Aerospace Workers.
			Mechanics Educational Society of America (Local 56).
			The Miller Company.
			Olin.
			Revere Copper Products.
			United Steelworkers of America.
A–580–605	731–TA–369	Color Picture Tubes/Korea	Industrial Union Department, AFL–CIO.
			International Association of Machinists & Aerospace Workers.
			International Brotherhood of Electrical Workers.
			International Union of Electronic, Electrical, Technical, Salaried and Machine Workers.
			Philips Electronic Components Group.
			United Steelworkers of America.
			Zenith Electronics.
A–580–803	731–TA–427	Small Business Telephone Systems/Korea	American Telephone & Telegraph.
			Comdial.
			Eagle Telephonic.
A–580–805	731–TA–442	Industrial Nitrocellulose/Korea	Hercules.
A–580–807	731–TA–459	Polyethylene Terephthalate Film/Korea	E I du Pont de Nemours.
			Hoechst Celanese.
			ICI Americas.
A–580–809	731–TA–533	Circular Welded Nonalloy Steel Pipe/Korea	Allied Tube & Conduit.
			American Tube.
			Bull Moose Tube.
			Century Tube.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–580–810	731–TA–540	Welded ASTM A–312 Stainless Steel Pipe/Korea ...	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products. United Steelworkers of America.
A–580–811	731–TA–546	Carbon Steel Wire Rope/Korea	Bridon American. Macwhyte. Paulsen Wire Rope. The Rochester Corporation. United Automobile, Aerospace and Agricultural Implement Workers (Local 960). Williamsport. Wire-rope Works. Wire Rope Corporation of America.
A–580–812	731–TA–556	DRAMs of 1 Megabit and Above/Korea	Micron Technology. NEC Electronics. Texas Instruments.
A–580–813	731–TA–563	Stainless Steel Butt-Weld Pipe Fittings/Korea	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–580–815	731–TA–607	Cold-Rolled Carbon Steel Flat Products/Korea	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–580–816	731–TA–618	Corrosion-Resistant Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–580–825	731–TA–715	Oil Country Tubular Goods/Korea	Bellville Tube. IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			USS/Kobe.
A–580–829	731–TA–772	Stainless Steel Wire Rod/Korea	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–580–831	731–TA–791	Stainless Steel Plate in Coils/Korea	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–580–834	731–TA–801	Stainless Steel Sheet and Strip/Korea	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–580–836	731–TA–821	Cut-to-Length Carbon Steel Plate/Korea	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
A–580–839	731–TA–825	Polyester Staple Fiber/Korea	Arteva Specialties Sarl. E I du Pont de Nemours. Intercontinental Polymers. Wellman.
A–580–841	731–TA–854	Structural Steel Beams/Korea	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI–Chaparral Steel. United Steelworkers of America.
A–580–844	731–TA–877	Steel Concrete Reinforcing Bar/Korea	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI–Chaparral Steel Co.
A–580–846	731–TA–889	Stainless Steel Angle/Korea	Slater Steels. United Steelworkers of America.
A–580–847	731–TA–916	Stainless Steel Bar/Korea	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–580–850	731–TA–1017 ...	Polyvinyl Alcohol/Korea	Celanese Ltd. E I du Pont de Nemours & Co.
A–580–852	731–TA–1026 ...	Prestressed Concrete Steel Wire Strand/Korea	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–583–008	731–TA–132	Small Diameter Carbon Steel Pipe and Tube/ Tawian.	Allied Tube & Conduit. American Tube.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Bull Moose Tube. Copperweld Tubing. J&L Steel. Kaiser Steel. Merchant Metals. Pittsburgh Tube. Southwestern Pipe. Western Tube & Conduit.
A–583–009	731–TA–135	Color Television Receivers/Taiwan	Committee to Preserve American Color Television. Independent Radionic Workers of America. Industrial Union Department, AFL–CIO. International Brotherhood of Electrical Workers. International Union of Electrical, Radio and Machine Workers.
A–583–080	AA1921–197	Carbon Steel Plate/Taiwan	No Petition (self-initiated by Treasury); Commerce service list identifies: Bethlehem Steel. China Steel. US Steel.
A–583–505	731–TA–277	Oil Country Tubular Goods/Taiwan	CF&I Steel. Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube. Quanex. US Steel.
A–583–507	731–TA–280	Malleable Cast Iron Pipe Fittings/Taiwan	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U–Brand. Ward Manufacturing.
A–583–508	731–TA–299	Porcelain-on-Steel Cooking Ware/Taiwan	General Housewares.
A–583–603	731–TA–305	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
A–583–605	731–TA–310	Carbon Steel Butt-Weld Pipe Fittings/Taiwan	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A–583–803	731–TA–410	Light-Walled Rectangular Tube/Taiwan	Bull Moose Tube. Hannibal Industries. Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit.
A–583–806	731–TA–428	Small Business Telephone Systems/Taiwan	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–583–810	731–TA–475	Chrome-Plated Lug Nuts/Taiwan	Consolidated International Automotive. Key Manufacturing. McGard.
A–583–814	731–TA–536	Circular Welded Nonalloy Steel Pipe/Taiwan	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–583–815	731–TA–541	Welded ASTM A–312 Stainless Steel Pipe/Taiwan	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			United Steelworkers of America.
A–583–816	731–TA–564	Stainless Steel Butt-Weld Pipe Fittings/Taiwan	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–583–820	731–TA–625	Helical Spring Lock Washers/Taiwan	Illinois Tool Works.
A–583–821	731–TA–640	Forged Stainless Steel Flanges/Taiwan	Gerlin. Ideal Forging. Maass Flange. Markovitz Enterprises.
A–583–824	731–TA–729	Polyvinyl Alcohol/Taiwan	Air Products and Chemicals.
A–583–825	731–TA–743	Melamine Institutional Dinnerware/Taiwan	Carlisle Food Service Products. Lexington United. Plastics Manufacturing.
A–583–826	731–TA–759	Collated Roofing Nails/Taiwan	Illinois Tool Works. International Staple and Machines. Stanley-Bostitch.
A–583–827	731–TA–762	SRAMs/Taiwan	Micron Technology.
A–583–828	731–TA–775	Stainless Steel Wire Rod/Taiwan	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–583–830	731–TA–793	Stainless Steel Plate in Coils/Taiwan	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–583–831	731–TA–803	Stainless Steel Sheet and Strip/Taiwan	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–583–833	731–TA–826	Polyester Staple Fiber/Taiwan	Arteva Specialties Sarl. Intercontinental Polymers. Wellman.
A–583–835	731–TA–906	Hot-Rolled Steel Products/Taiwan	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–583–837	731–TA–934	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/Taiwan.	DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
A–588–005	731–TA–48	High Power Microwave Amplifiers/Japan	Aydin. MCL.
A–588–015	AA1921–66	Television Receivers/Japan	AGIV (USA). Casio Computer. CBM America. Citizen Watch. Funai Electric. Hitachi. Industrial Union Department. JC Penny. Matsushita. Mitsubishi Electric. Montgomery Ward.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			NEC.
			Orion Electric.
			PT Imports.
			Philips Electronics.
			Philips Magnavox.
			Sanyo.
			Sharp.
			Toshiba.
			Toshiba America Consumer Products.
			Victor Company of Japan.
			Zenith Electronics.
A–588–028	AA1921–111	Roller Chain/Japan	Acme Chain Division, North American Rockwell.
			American Chain Association.
			Atlas Chain & Precision Products.
			Diamond Chain.
			Link-Belt Chain Division, FMC.
			Morse Chain Division, Borg Warner.
			Rex Chainbelt.
A–588–029	AA1921–85	Fish Netting of Man-Made Fiber/Japan	Jovanovich Supply.
			LFSI.
			Trans-Pacific Trading.
A–588–038	AA1921–98	Bicycle Speedometers/Japan	Avocet.
			Cat Eye.
			Diversified Products.
			NS International.
			Sanyo Electric.
			Stewart-Warner.
A–588–041	AA1921–115	Synthetic Methionine/Japan	Monsanto.
A–588–045	AA1921–124	Steel Wire Rope/Japan	AMSTED Industries.
A–588–046	AA1921–129	Polychloroprene Rubber/Japan	E I du Pont de Nemours.
A–588–054	AA1921–143	Tapered Roller Bearings 4 Inches and Under/Japan	No companies identified as petitioners at the Commission; Commerce service list identifies:
			American Honda Motor.
			Federal Mogul.
			Ford Motor.
			General Motors.
			Honda.
			Hoover-NSK Bearing.
			Isuzu.
			Itocho.
			ITOCHU International.
			Kanematsu-Goshu USA.
			Kawasaki Heavy Duty Industries.
			Komatsu America.
			Koyo Seiko.
			Kubota Tractor.
			Mitsubishi.
			Motorambar.
			Nachi America.
			Nachi Western.
			Nachi-Fujikoshi.
			Nippon Seiko.
			Nissan Motor.
			Nissan Motor USA.
			NSK.
			NTN.
			Subaru of America.
			Sumitomo.
			Suzuki Motor.
			Timken.
			Toyota Motor Sales.
			Yamaha Motors.
A–588–055	AA1921–154	Acrylic Sheet/Japan	Polycast Technology.
A–588–056	AA1921–162	Melamine/Japan	Melamine Chemical.
A–588–068	AA1921–188	Prestressed Concrete Steel Wire Strand/Japan	American Spring Wire.
			Armco Steel.
			Bethlehem Steel.
			CF&I Steel.
			Florida Wire & Cable.
A–588–405	731–TA–207	Cellular Mobile Telephones/Japan	EF Johnson.
			Motorola.
A–588–602	731–TA–309	Carbon Steel Butt-Weld Pipe Fittings/Japan	Ladish.
			Mills Iron Works.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Steel Forgings.
			Tube Forgings of America.
			Weldbend.
A–588–604	731–TA–343	Tapered Roller Bearings Over 4 Inches/Japan	L&S Bearing.
			Timken.
			Torrington.
A–588–605	731–TA–347	Malleable Cast Iron Pipe Fittings/Japan	Grinnell.
			Stanley G Flagg.
			Stockham Valves & Fittings.
			U–Brand.
			Ward Manufacturing.
A–588–609	731–TA–368	Color Picture Tubes/Japan	Industrial Union Department, AFL–CIO.
			International Association of Machinists & Aerospace Workers.
			International Brotherhood of Electrical Workers.
			International Union of Electronic, Electrical, Technical, Salaried and Machine Workers.
			Philips Electronic Components Group.
			United Steelworkers of America.
			Zenith Electronics.
A–588–702	731–TA–376	Stainless Steel Butt-Weld Pipe Fittings/Japan	Flo-Mac Inc.
			Flowline.
			Shaw Alloy Piping Products.
			Taylor Forge Stainless.
A–588–703	731–TA–377	Internal Combustion Industrial Forklift Trucks/Japan	Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama Facilities.
			Allied Industrial Workers of America.
			Hyster.
			Independent Lift Truck Builders Union.
			International Association of Machinists & Aerospace Workers.
			United Shop & Service Employees.
A–588–704	731–TA–379	Brass Sheet and Strip/Japan	Allied Industrial Workers of America.
			American Brass.
			Bridgeport Brass.
			Chase Brass & Copper.
			Hussey Copper.
			International Association of Machinists & Aerospace Workers.
			Mechanics Educational Society of America (Local 56).
			The Miller Company.
			North Coast Brass & Copper.
			Olin.
			Pegg Metals.
			Revere Copper Products.
			United Steelworkers of America.
A–588–706	731–TA–384	Nitrile Rubber/Japan	Uniroyal Chemical.
A–588–707	731–TA–386	Granular Polytetrafluoroethylene/Japan	E I du Pont de Nemours.
			ICI Americas.
A–588–802	731–TA–389	3.5″ Microdisks/Japan	Verbatim.
A–588–804	731–TA–394–A	Ball Bearings/Japan	Barden Corp.
			Emerson Power Transmission.
			Kubar Bearings.
			McGill Manufacturing Co.
			MPB.
			Rexnord Inc.
			Rollway Bearings.
			Torrington.
A–588–804	731–TA–394–B	Cylindrical Roller Bearings/Japan	Barden Corp.
			Emerson Power Transmission.
			Kubar Bearings.
			MPB.
			Rollway Bearings.
			Torrington.
A–588–804	731–TA–394–C	Spherical Plain Bearings/Japan	Barden Corp.
			Emerson Power Transmission.
			Kubar Bearings.
			Rollway Bearings.
			Torrington.
A–588–806	731–TA–408	Electrolytic Manganese Dioxide/Japan	Chemetals.
			Kerr-McGee.
			Rayovac.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–588–807	731–TA–414	Industrial Belts/Japan	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–588–809	731–TA–426	Small Business Telephone Systems/Japan	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–588–810	731–TA–429	Mechanical Transfer Presses/Japan	Allied Products. United Autoworkers of America. United Steelworkers of America.
A–588–811	731–TA–432	Drafting Machines/Japan	Vemco.
A–588–812	731–TA–440	Industrial Nitrocellulose/Japan	Hercules.
A–588–815	731–TA–461	Gray Portland Cement and Clinker/Japan	Calaveras Cement. Hanson Permanente Cement. Independent Workers of North America (Locals 49, 52, 89, 192 and 471). International Union of Operating Engineers (Local 12). National Cement Co Inc. National Cement Company of California. Southdown.
A–588–817	731–TA–469	Electroluminescent Flat-Panel Displays/Japan	The Cherry Corporation. Electro Plasma. Magnascreen. OIS Optical Imaging Systems. Photonics Technology. Planar Systems. Plasmaco.
A–588–823	731–TA–571	Professional Electric Cutting Tools/Japan	Black & Decker.
A–588–826	731–TA–617	Corrosion-Resistant Carbon Steel Flat Products/ Japan.	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Lukens Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–588–831	731–TA–660	Grain-Oriented Silicon Electrical Steel/Japan	Allegheny Ludlum. Armco Steel. United Steelworkers of America.
A–588–833	731–TA–681	Stainless Steel Bar/Japan	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–588–835	731–TA–714	Oil Country Tubular Goods/Japan	IPSCO. Koppel Steel. Lone Star Steel Co. Maverick Tube. Newport Steel. North Star Steel. US Steel.
A–588–836	731–TA–727	Polyvinyl Alcohol/Japan	Air Products and Chemicals.
A–588–837	731–TA–737	Large Newspaper Printing Presses/Japan	Rockwell Graphics Systems.
A–588–838	731–TA–739	Clad Steel Plate/Japan	Lukens Steel.
A–588–839	731–TA–740	Sodium Azide/Japan	American Azide.
A–588–840	731–TA–748	Gas Turbo-Compressor Systems/Japan	Demag Delaval. Dresser-Rand. United Steelworkers of America.
A–588–841	731–TA–750	Vector Supercomputers/Japan	Cray Research.
A–588–843	731–TA–771	Stainless Steel Wire Rod/Japan	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–588–845	731–TA–800	Stainless Steel Sheet and Strip/Japan	Allegheny Ludlum.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–588–846	731–TA–807	Hot-Rolled Carbon Steel Flat Products/Japan	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–588–847	731–TA–820	Cut-to-Length Carbon Steel Plate/Japan	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
A–588–850	731–TA–847	Large-Diameter Carbon Steel Seamless Pipe/Japan	North Star Steel. Timken. US Steel. United Steelworkers of America. USS/Kobe.
A–588–851	731–TA–847	Small-Diameter Carbon Steel Seamless Pipe/Japan	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
A–588–852	731–TA–853	Structural Steel Beams/Japan	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI–Chaparral Steel. United Steelworkers of America.
A–588–854	731–TA–860	Tin-Mill Products/Japan	Independent Steelworkers. United Steelworkers of America. Weirton Steel.
A–588–856	731–TA–888	Stainless Steel Angle/Japan	Slater Steels. United Steelworkers of America.
A–588–857	731–TA–919	Welded Large Diameter Line Pipe/Japan	American Cast Iron Pipe. Berg Steel Pipe. Bethlehem Steel. Napa Pipe/Oregon Steel Mills. Saw Pipes USA. Stupp. US Steel.
A–588–861	731–TA–1016 ...	Polyvinyl Alcohol/Japan	Celenex Ltd. E I du Pont de Nemours & Co.
A–588–862	731–TA–1023 ...	Certain Ceramic Station Post Insulators/Japan	Lapp Insulator Co LLC. Newell Porcelain Co Inc. Victor Insulators Inc.
A–588–866	731–TA–1090 ...	Superalloy Degassed Chromium/Japan	Eramet Marietta Inc.
A–602–803	731–TA–612	Corrosion-Resistant Carbon Steel Flat Products/ Australia.	Armco Steel. Bethlehem Steel. California Steel Industries.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–791–805	731–TA–792	Stainless Steel Plate in Coils/South Africa	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–791–808	731–TA–850	Small-Diameter Carbon Steel Seamless Pipe/South Africa.	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
A–791–809	731–TA–905	Hot-Rolled Steel Products/South Africa	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–791–815	731–TA–987	Ferrovanadium/South Africa	Bear Metallurgical Co. Shieldalloy Metallurgical Corp.
A–821–801	731–TA–340E ..	Solid Urea/Russia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–821–802	731–TA–539–C	Uranium/Russia	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources.
A–821–804	731–TA–568	Ferrosilicon/Russia	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
A–821–805	731–TA–697	Pure Magnesium/Russia	Dow Chemical. International Union of Operating Engineers (Local 564). Magnesium Corporation of America. United Steelworkers of America (Local 8319).
A–821–807	731–TA–702	Ferrovanadium and Nitrided Vanadium/Russia	Shieldalloy Metallurgical.
A–821–809	731–TA–808	Hot-Rolled Carbon Steel Flat Products/Russia	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–821–811	731–TA–856	Ammonium Nitrate/Russia	Agrium. Air Products and Chemicals. El Dorado Chemical. LaRoche. Mississippi Chemical. Nitram. Wil-Gro Fertilizer.
A–821–817	731–TA–991	Silicon Metal/Russia	Globe Metallurgical Inc. SIMCALA Inc.
A–821–819	731–TA1072	Pure and Alloy Magnesium/Russia	Garfield Alloys Inc. Glass, Molders, Pottery, Plastics & Allied Workers International Local 374. Halaco Engineering. MagReTech Inc. United Steelworkers of America Local 8319. US Magnesium LLC.
A–822–801	731–TA–340B ..	Solid Urea/Belarus	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–822–804	731–TA–873	Steel Concrete Reinforcing Bar/Belarus	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI–Chaparral Steel Co.
A–823–801	731–TA–340H ..	Solid Urea/Ukraine	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–823–802	731–TA–539–E	Uranium/Ukraine	Ferret Exploration. First Holding.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources.
A–823–804	731–TA–569	Ferrosilicon/Ukraine	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A–823–805	731–TA–673	Silicomanganese/Ukraine	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3–639).
A–823–809	731–TA–882	Steel Concrete Reinforcing Bar/Ukraine	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI–Chaparral Steel Co.
A–823–810	731–TA–894	Ammonium Nitrate/Ukraine	Agrium. Air Products and Chemicals. Committee for Fair Ammonium Nitrate Trade. El Dorado Chemical. LaRoche Industries. Mississippi Chemical. Nitram. Prodica.
A–823–811	731–TA–908	Hot-Rolled Steel Products/Ukraine	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–823–812	731–TA–962	Carbon and Certain Alloy Steel Wire Rod/Ukraine ...	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–831–801	731–TA–340A ..	Solid Urea/Armenia	Agrico Chemical. American Cyanamid.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–834–806	731–TA–902	Hot-Rolled Steel Products/Kazakhstan	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dymanics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–834–807	731–TA–930	Silicomanganese/Kazakhstan	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639.
A–841–804	731–TA–879	Steel Concrete Reinforcing Bar/Moldova	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI–Chaparral Steel Co.
A–841–805	731–TA–959	Carbon and Certain Alloy Steel Wire Rod/Moldova	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–842–801	731–TA–340F ...	Solid Urea/Tajikistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–843–801	731–TA–340G ..	Solid Urea/Turkmenistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–843–802	731–TA–539	Uranium/Kazakhstan	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Total Minerals. Umetco Minerals. Uranium Resources.
A–843–804	731–TA–566	Ferrosilicon/Kazakhstan	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A–844–801	731–TA–340I	Solid Urea/Uzbekistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–844–802	731–TA–539–F	Uranium/Uzbekistan	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources.
A–851–802	731–TA–846	Small-Diameter Carbon Steel Seamless Pipe/Czech Republic.	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
C–122–404	701–TA–224	Live Swine/Canada	National Pork Producers Council. Wilson Foods.
C–122–805	701–TA–297	Steel Rails/Canada	Bethlehem Steel. CF&I Steel.
C–122–815	701–TA–309–A	Alloy Magnesium/Canada	Magnesium Corporation of America.
C–122–815	701–TA–309–B	Pure Magnesium/Canada	Magnesium Corporation of America.
C–122–839	701–TA–414	Softwood Lumber/Canada	71 Lumber Co. Almond Bros Lbr Co. Anthony Timberlands. Balfour Lbr Co. Ball Lumber. Banks Lumber Company. Barge Forest Products Co. Beadles Lumber Co. Bearden Lumber. Bennett Lumber. Big Valley Band Mill. Bighorn Lumber Co Inc. Blue Mountain Lumber. Buddy Bean Lumber. Burgin Lumber Co Ltd. Burt Lumber Company. C&D Lumber Co. Ceda-Pine Veneer. Cersosimo Lumber Co Inc. Charles Ingram Lumber Co Inc. Charleston Heart Pine. Chesterfield Lumber. Chips. Chocorua Valley Lumber Co. Claude Howard Lumber. Clearwater Forest Industries. CLW Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			CM Tucker Lumber Corp. Coalition for Fair Lumber Imports Executive Committee. Cody Lumber Co. Collins Pine Co. Collums Lumber. Columbus Lumber Co. Contoocook River Lumber. Conway Guiteau Lumber. Cornwright Lumber Co. Crown Pacific. Daniels Lumber Inc. Dean Lumber Co Inc. Deltic Timber Corporation. Devils Tower Forest Products. DiPrizio Pine Sales. Dorchester Lumber Co. DR Johnson Lumber. East Brainerd Lumber Co. East Coast Lumber Company. Eas-Tex Lumber. ECK Wood Products. Ellingson Lumber Co. Elliott Sawmilling. Empire Lumber Co. Evergreen Forest Products. Excalibur Shelving Systems Inc. Exley Lumber Co. FH Stoltze Land & Lumber Co. FL Turlington Lbr Co Inc. Fleming Lumber. Flippo Lumber. Floragen Forest Products. Frank Lumber Co. Franklin Timber Co. Fred Tebb & Sons. Fremont Sawmill. Frontier Resources. Garrison Brothers Lumber Co and Subsidiaries. Georgia Lumber. Gilman Building Products. Godfrey Lumber. Granite State Forest Prod Inc. Great Western Lumber Co. Greenville Molding Inc. Griffin Lumber Company. Guess Brothers Lumber. Gulf Lumber. Gulf States Paper. Guy Bennett Lumber. Hampton Resources. Hancock Lumber. Hankins Inc. Hankins Lumber Co. Harrigan Lumber. Harwood Products. Haskell Lumber Inc. Hatfield Lumber. Hedstrom Lumber. Herrick Millwork Inc. HG Toler & Son Lumber Co Inc. HG Wood Industries LLC. Hogan & Storey Wood Prod. Hogan Lumber Co. Hood Industries. HS Hofler & Sons Lumber Co Inc. Hubbard Forest Ind Inc. HW Culp Lumber Co. Idaho Veneer Co. Industrial Wood Products. Intermountain Res LLC. International Paper. J Franklin Jones Lumber Co Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Jack Batte & Sons Inc. Jasper Lumber Company. JD Martin Lumber Co. JE Jones Lumber Co. Jerry G Williams & Sons. JH Knighton Lumber Co. Johnson Lumber Company. Jordan Lumber & Supply. Joseph Timber Co. JP Haynes Lbr Co Inc. JV Wells Inc. JW Jones Lumber. Keadle Lumber Enterprises. Keller Lumber. King Lumber Co. Konkolville Lumber. Langdale Forest Products. Laurel Lumber Company. Leavitt Lumber Co. Leesville Lumber Co. Limington Lumber Co. Longview Fibre Co. Lovell Lumber Co Inc. M Kendall Lumber Co. Manke Lumber Co. Marriner Lumber Co. Mason Lumber. MB Heath & Sons Lumber Co. MC Dixon Lumber Co Inc. Mebane Lumber Co Inc. Metcalf Lumber Co Inc. Millry Mill Co Inc. Moose Creek Lumber Co. Moose River Lumber. Morgan Lumber Co Inc. Mount Yonah Lumber Co. Nagel Lumber. New Kearsarge Corp. New South. Nicolet Hardwoods. Nieman Sawmills SD. Nieman Sawmills WY. North Florida. Northern Lights Timber & Lumber. Northern Neck Lumber Co. Ochoco Lumber Co. Olon Belcher Lumber Co. Owens and Hurst Lumber. Packaging Corp of America. Page & Hill Forest Products. Paper, Allied-Industrial, Chemical and Energy Workers International Union. Parker Lumber. Pate Lumber Co Inc. PBS Lumber. Pedigo Lumber Co. Piedmont Hardwood Lumber Co. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant River Lumber Co. Pleasant Western Lumber Inc. Plum Creek Timber. Pollard Lumber. Portac. Potlatch. Potomac Supply. Precision Lumber Inc. Pruitt Lumber Inc. R Leon Williams Lumber Co. RA Yancey Lumber. Rajala Timber Co. Ralph Hamel Forest Products. Randy D Miller Lumber.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Rappahannock Lumber Co. Regulus Stud Mills Inc. Riley Creek Lumber. Roanoke Lumber Co. Robbins Lumber. Robertson Lumber. Roseburg Forest Products Co. Rough & Ready. RSG Forest Products. Rushmore Forest Products. RY Timber Inc. Sam Mabry Lumber Co. Scotch Lumber. SDS Lumber Co. Seacoast Mills Inc. Seago Lumber. Seattle-Snohomish. Seneca Sawmill. Shaver Wood Products. Shearer Lumber Products. Shuqualak Lumber. SI Storey Lumber. Sierra Forest Products. Sierra Pacific Industries. Sigfridson Wood Products. Silver City Lumber Inc. Somers Lbr & Mfg Inc. South & Jones. South Coast. Southern Forest Industries Inc. Southern Lumber. St Laurent Forest Products. Starfire Lumber Co. Steely Lumber Co Inc. Stimson Lumber. Summit Timber Co. Sundance Lumber. Superior Lumber. Swanson Superior Forest Products Inc. Swift Lumber. Tamarack Mill. Taylor Lumber & Treating Inc. Temple-Inland Forest Products. Thompson River Lumber. Three Rivers Timber. Thrift Brothers Lumber Co Inc. Timco Inc. Tolleson Lumber. Toney Lumber. TR Miller Mill Co. Tradewinds of Virginia Ltd. Travis Lumber Co. Tree Source Industries Inc. Tri-State Lumber. TTT Studs. United Brotherhood of Carpenters and Joiners. Viking Lumber Co. VP Kiser Lumber Co. Walton Lumber Co Inc. Warm Springs Forest Products. Westvaco Corp. Wilkins, Kaiser & Olsen Inc. WM Shepherd Lumber Co. WR Robinson Lumber Co Inc. Wrenn Brothers Inc. Wyoming Sawmills. Yakama Forest Products. Younce & Ralph Lumber Co Inc. Zip-O-Log Mills Inc.
C–122–841	701–TA–418	Carbon and Certain Alloy Steel Wire Rod/Canada ..	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
C–122–848	701–TA–430B ..	Hard Red Spring Wheat/Canada	North Dakota Wheat Commission.
C–201–505	701–TA–265	Porcelain-on-Steel Cooking Ware/Mexico	General Housewares.
C–201–810	701–TA–325	Cut-to-Length Carbon Steel Plate/Mexico	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–307–804	303–TA–21	Gray Portland Cement and Clinker/Venezuela	Florida Crushed Stone. Southdown. Tarmac America.
C–307–808	303–TA–23	Ferrosilicon/Venezuela	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
C–333–401	701–TA–E	Cotton Shop Towels/Peru	No case at the Commission; Commerce service list identifies: Durafab. Kleen-Tex Industries. Lewis Eckert Robb. Milliken. Pavis & Harcourt.
C–351–037	104–TAA–21	Cotton Yarn/Brazil	American Yarn Spinners Association. Harriet & Henderson Yarns. LaFar Industries.
C–351–504	701–TA–249	Heavy Iron Construction Castings/Brazil	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
C–351–604	701–TA–269	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
C–351–818	701–TA–320	Cut-to-Length Carbon Steel Plate/Brazil	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–351–829	701–TA–384	Hot-Rolled Carbon Steel Flat Products/Brazil	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–351–833	701–TA–417	Carbon and Certain Alloy Steel Wire Rod/Brazil	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
C–357–004	701–TA–A	Carbon Steel Wire Rod/Argentina	Atlantic Steel. Continental Steel. Georgetown Steel. North Star Steel. Raritan River Steel.
C–357–813	701–TA–402	Honey/Argentina	AH Meyer & Sons. Adee Honey Farms. Althoff Apiaries. American Beekeeping Federation. American Honey Producers Association. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. B Weaver Apiaries. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Bill Rhodes Honey. Richard E Blake. Curt Bronnenbery. Brown's Honey Farms. Brumley's Bees.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Charles Apiaries. Mitchell Charles. Collins Honey. Conor Apiaries. Coy's Honey Farm. Dave Nelson Apiaries. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L Emmons, Sr. Gause Honey. Gene Brandi Apiaries. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. Missouri River Honey. Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Peterson's ''Naturally Sweet'' Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Robertson Pollination Service. Robson Honey. William Robson. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. Sioux Honey Association. Smoot Honey. Solby Honey. Stahlman Apiaries. Steve E Parks Apiaries. Stroope Bee & Honey.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			T&D Honey Bee. Talbott's Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. Walter L Wilson Buzz 76 Apiaries. Wiebersiek Honey Farms. Wilmer Farms. Brent J Woodworth. Wooten's Golden Queens. Yaddof Apiaries.
C–357–815	701–TA–404	Hot-Rolled Steel Products/Argentina	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–401–401	701–TA–231	Cold-Rolled Carbon Steel Flat Products/Sweden	Bethlehem Steel. Chaparral. US Steel.
C–401–804	701–TA–327	Cut-to-Length Carbon Steel Plate/Sweden	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–403–802	701–TA–302	Fresh and Chilled Atlantic Salmon/Norway	Heritage Salmon. The Coalition for Fair Atlantic Salmon Trade.
C–408–046	104–TAA–7	Sugar/EU	No petition at the Commission; Commerce service list identifies:. AJ Yates. Alexander & Baldwin. American Farm Bureau Federation. American Sugar Cane League. American Sugarbeet Growers Association. Amstar Sugar. Florida Sugar Cane League. Florida Sugar Marketing and Terminal Association. H&R Brokerage. Hawaiian Agricultural Research Center. Leach Farms. Michigan Farm Bureau. Michigan Sugar. Rio Grande Valley Sugar Growers Association. Sugar Cane Growers Cooperative of Florida. Talisman Sugar. US Beet Sugar Association. United States Beet Sugar Association. United States Cane Sugar Refiners' Association.
C–412–815	701–TA–328	Cut-to-Length Carbon Steel Plate/United Kingdom ..	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–412–821	701–TA–412	Low Enriched Uranium/United Kingdom	United States Enrichment Corp. USEC Inc.
C–421–601	701–TA–278	Fresh Cut Flowers/Netherlands	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
C–421–809	701–TA–411	Low Enriched Uranium/Netherlands	United States Enrichment Corp. USEC Inc.
C–423–806	701–TA–319	Cut-to-Length Carbon Steel Plate/Belgium	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–423–809	701–TA–376	Stainless Steel Plate in Coils/Belgium	Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–427–603	701–TA–270	Brass Sheet and Strip/France	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
C–427–805	701–TA–315	Hot-Rolled Lead and Bismuth Carbon Steel Products/France.	Bethlehem Steel. Inland Steel Industries. USS/Kobe Steel.
C–427–810	701–TA–348	Corrosion-Resistant Carbon Steel Flat Products/France.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
C–427–815	701–TA–380	Stainless Steel Sheet and Strip/France	Weirton Steel. Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–427–817	701–TA–387	Cut-to-Length Carbon Steel Plate/France	Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
C–427–819	701–TA–409	Low Enriched Uranium/France	United States Enrichment Corp. USEC Inc.
C–428–817	701–TA–340	Cold-Rolled Carbon Steel Flat Products/Germany ...	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–428–817	701–TA–349	Corrosion-Resistant Carbon Steel Flat Products/ Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–428–817	701–TA–322	Cut-to-Length Carbon Steel Plate/Germany	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–428–829	701–TA–410	Low Enriched Uranium/Germany	United States Enrichment Corp. USEC Inc.
C–437–805	701–TA–426	Sulfanilic Acid/Hungary	Nation Ford Chemical.
C–469–004	701–TA–178	Stainless Steel Wire Rod/Spain	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Colt Industries. Cyclops. Guterl Special Steel.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
C–469–804	701–TA–326	Cut-to-Length Carbon Steel Plate/Spain	Joslyn Stainless Steels. Republic Steel. Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–475–812	701–TA–355	Grain-Oriented Silicon Electrical Steel/Italy	Allegheny Ludlum. Armco Steel. Butler Armco Independent Union. United Steelworkers of America. Zanesville Armco Independent Union.
C–475–815	701–TA–362	Seamless Pipe/Italy	Koppel Steel. Quanex. Timken. United States Steel.
C–475–817	701–TA–364	Oil Country Tubular Goods/Italy	IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
C–475–819	701–TA–365	Pasta/Italy	A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
C–475–821	701–TA–373	Stainless Steel Wire Rod/Italy	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
C–475–823	701–TA–377	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–475–825	701–TA–381	Stainless Steel Sheet and Strip/Italy	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–475–827	701–TA–390	Cut-to-Length Carbon Steel Plate/Italy	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. US Steel.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
C–475–830	701–TA–413	Stainless Steel Bar/Italy	United Steelworkers of America. Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels.
C–489–502	701–TA–253	Welded Carbon Steel Pipe and Tube/Turkey	United Steelworkers of America. Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR–Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
C–489–806	701–TA–366	Pasta/Turkey	A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
C–507–501	N/A	Raw In-Shell Pistachios/Iran	Blackwell Land Co. Cal Pure Pistachios Inc. California Pistachio Commission. California Pistachio Orchards. Keenan Farms Inc. Kern Pistachio Hulling & Drying Co-Op. Los Rancheros de Poco Pedro. Pistachio Producers of California. TM Duche Nut Co Inc.
C–507–601	N/A	Roasted In-Shell Pistachios/Iran	Cal Pure Pistachios Inc. California Pistachio Commission. Keenan Farms Inc. Kern Pistachio Hulling & Drying Co-Op. Pistachio Producers of California. TM Duche Nut Co Inc.
C–508–605	701–TA–286	Industrial Phosphoric Acid/Israel	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
C–533–063	303–TA–13	Iron Metal Castings/India	Campbell Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Pinkerton Foundry. US Foundry & Manufacturing. Vulcan Foundry.
C–533–807	701–TA–318	Sulfanilic Acid/India	R–M Industries.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
C–533–818	701–TA–388	Cut-to-Length Carbon Steel Plate/India	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C–533–821	701–TA–405	Hot-Rolled Steel Products/India	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–533–825	701–TA–415	Polyethylene Terephthalate Film, Sheet and Strip (PET Film)/India.	DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
C–533–829	701–TA–432	Prestressed Concrete Steel Wire Strand/India	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
C–533–839	701–TA–437	Carbazole Violet Pigment 23/India	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
C–533–844	701–TA–442	Certain Lined Paper School Supplies/India	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (USW).
C–535–001	701–TA–202	Cotton Shop Towels/Pakistan	Milliken.
C–549–818	701–TA–408	Hot-Rolled Steel Products/Thailand	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–560–806	701–TA–389	Cut-to-Length Carbon Steel Plate/Indonesia	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C–560–813	701–TA–406	Hot-Rolled Steel Products/Indonesia	Bethlehem Steel. Gallatin Steel.

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			Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–560–819	701–TA–443	Certain Lined Paper School Supplies/Indonesia	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (USW).
C–580–602	701–TA–267	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
C–580–818	701–TA–342	Cold-Rolled Carbon Steel Flat Products/Korea	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–580–818	701–TA–350	Corrosion-Resistant Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–580–835	701–TA–382	Stainless Steel Sheet and Strip/Korea	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–580–837	701–TA–391	Cut-to-Length Carbon Steel Plate/Korea	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel.

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C–580–842	701–TA–401	Structural Steel Beams/Korea	IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America. Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI–Chaparral Steel. United Steelworkers of America.
C–580–851	701–TA–431	DRAMs and DRAM Modules/Korea	Dominion Semiconductor LLC/Micron Technology Inc. Infineon Technologies Richmond LP. Micron Technology Inc.
C–583–604	701–TA–268	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
C–791–806	701–TA–379	Stainless Steel Plate in Coils/South Africa	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–791–810	701–TA–407	Hot-Rolled Steel Products/South Africa	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–331–802	731–TA–1065 ...	Certain Frozen Warmwater Shrimp and Prawns/Ecuador.	
A–351–838	731–TA–1063 ...	Certain Frozen Warmwater Shrimp and Prawns/Brazil.	
A–533–840	731–TA–1066 ...	Certain Frozen Warmwater Shrimp and Prawns/India.	
A–549–822	731–TA–1067 ...	Certain Frozen Warmwater Shrimp and Prawns/Thailand.	
A–552–802	731–TA–1068 ...	Certain Frozen Warmwater Shrimp and Prawns/Vietnam.	
A–570–893	731–TA–1064 ...	Certain Frozen Warmwater Shrimp and Prawns/China.	Petitioners/Supporters for all six cases listed: Abadie, Al J. Abadie, Anthony. Abner, Charles. Abraham, Steven. Abshire, Gabriel J. Ackerman, Dale J. Acosta, Darryl L. Acosta, Jerry J Sr. Acosta, Leonard C. Acosta, Wilson Pula Sr. Adam, Denise T. Adam, Michael A.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Adam, Richard B Jr Adam, Sherry P Adam, William E Adam, Alcide J Jr Adams, Dudley Adams, Elizabeth L Adams, Ervin Adams, Ervin Adams, George E Adams, Hursy J Adams, James Arthur Adams, Kelly Adams, Lawrence J Jr. Adams, Randy. Adams, Ritchie. Adams, Steven A. Adams, Ted J. Adams, Tim. Adams, Whitney P Jr. Agoff, Ralph J. Aguilar, Rikardo. Aguillard, Roddy G. Alario, Don Ray. Alario, Nat. Alario, Pete J. Alario, Timmy. Albert, Craig J. Albert, Junior J. Alexander, Everett O. Alexander, Robert F Jr. Alexie, Benny J. Alexie, Corkey A. Alexie, Dolphy. Alexie, Felix Jr. Alexie, Gwendolyn. Alexie, John J. Alexie, John V. Alexie, Larry J Sr. Alexie, Larry Jr. Alexie, Vincent L Jr. Alexis, Barry S. Alexis, Craig W. Alexis, Micheal. Alexis, Monique. Alfonso, Anthony E Jr. Alfonso, Jesse. Alfonso, Nicholas. Alfonso, Paul Anthony. Alfonso, Randy. Alfonso, Terry S Jr. Alfonso, Vernon Jr. Alfonso, Yvette. Alimia, Angelo A Jr. Allemand, Dean J. Allen, Annie. Allen, Carolyn Sue. Allen, Jackie. Allen, Robin. Allen, Wayne. Allen, Wilbur L. Allen, Willie J III. Allen, Willie Sr. Alphonso, John. Ancalade, Leo J. Ancar, Claudene. Ancar, Jerry T. Ancar, Joe C. Ancar, Merlin Sr. Ancar, William Sr. Ancelet, Gerald Ray. Anderson, Andrew David. Anderson, Ernest W. Anderson, Jerry.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Anderson, John. Anderson, Lynwood. Anderson, Melinda Rene. Anderson, Michael Brian. Anderson, Ronald L Sr. Anderson, Ronald Louis Jr. Andonie, Miguel. Andrews, Anthony R. Andry, Janice M. Andry, Rondey S. Angelle, Louis. Anglada, Eugene Sr. Ansardi, Lester. Anselmi, Darren. Aparicio, Alfred. Aparicio, David. Aparicio, Ernest. Arabie, Georgia P. Arabie, Joseph. Arcement, Craig J. Arcement, Lester C. Arcemont, Donald Sr. Arceneaux, Matthew J. Arceneaux, Michael K. Areas, Christopher J. Armbruster, John III. Armbruster, Paula D. Armstrong, Jude Jr. Arnesen, George. Arnold, Lonnie L Jr. Arnona, Joseph T. Arnondin, Robert. Arthur, Brenda J. Assavedo, Floyd. Atwood, Gregory Kenneth. Au, Chow D. Au, Robert. Aucoin, Dewey F. Aucoin, Earl. Aucoin, Laine A. Aucoin, Perry J. Austin, Dennis. Austin, Dennis J. Authement, Brice. Authement, Craig L. Authement, Dion J. Authement, Gordon. Authement, Lance M. Authement, Larry. Authement, Larry Sr. Authement, Roger J. Authement, Sterling P. Autin, Bobby. Autin, Bruce J. Autin, Kenneth D. Autin, Marvin J. Autin, Paul F Jr. Autin, Roy. Avenel, Albert J Jr. Ba Wells, Tran Thi. Babb, Conny. Babin, Brad. Babin, Joey L. Babin, Klint. Babin, Molly. Babin, Norman J. Babineaux, Kirby. Babineaux, Vicki. Bach, Ke Van. Bach, Reo Long. Backman, Benny. Badeaux, Todd. Baham, Dewayne.

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			Bailey, Albert. Bailey, Antoine III. Bailey, David B Sr. Bailey, Don. Baker, Clarence. Baker, Donald Earl. Baker, James. Baker, Kenneth. Baker, Ronald J. Balderas, Antonio. Baldwin, Richard Prentiss. Ballard, Albert. Ballas, Barbara A. Ballas, Charles J. Baltz, John F. Ban, John. Bang, Bruce K. Barbaree, Joe W. Barbe, Mark A and Cindy. Barber, Louie W Jr. Barber, Louie W Sr. Barbier, Percy T. Barbour, Raymond A. Bargainear, James E. Barisich, George A. Barisich, Joseph J. Barnette, Earl. Barnhill, Nathan. Barrios, Clarence. Barrios, Corbert J. Barrios, Corbert M. Barrios, David. Barrios, John. Barrios, Shane James. Barrois, Angela Gail. Barrois, Dana A. Barrois, Tracy James. Barrois, Wendell Jude Jr. Barthe, Keith Sr. Barthelemy, Allen M. Barthelemy, John A. Barthelemy, Rene T Sr. Barthelemy, Walter A Jr. Bartholomew, Mitchell. Bartholomew, Neil W. Bartholomew, Thomas E. Bartholomew, Wanda C. Basse, Donald J Sr. Bates, Mark. Bates, Ted Jr. Bates, Vernon Jr. Battle, Louis. Baudoin, Drake J. Baudoin, Murphy A. Baudouin, Stephen. Bauer, Gary. Baye, Glen P. Bean, Charles A. Beazley, William E. Becnel, Glenn J. Becnel, Kent. Beecher, Carold F. Beechler, Ronald. Bell, James E. Bell, Ronald A. Bellanger, Arnold. Bellanger, Clifton. Bellanger, Scott J. Belsome, Derrell M. Belsome, Karl M. Bennett, Cecil A Jr. Bennett, Gary Lynn. Bennett, Irin Jr.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Bennett, James W Jr. Bennett, Louis. Benoit, Francis J. Benoit, Nicholas L. Benoit, Paula T. Benoit, Tenna J Jr. Benton, Walter T. Berger, Ray W. Bergeron, Alfred Scott. Bergeron, Jeff. Bergeron, Nolan A. Bergeron, Ulysses J. Bernard, Lamont L. Berner, Mark J. Berthelot, Gerard J Sr. Berthelot, James A. Berthelot, Myron J. Bertrand, Jerl C. Beverung, Keith J. Bianchini, Raymond W. Bickham, Leo E. Bienvenu, Charles. Biggs, Jerry W Sr. Bigler, Delbert. Billington, Richard. Billiot, Alfredia. Billiot, Arthur. Billiot, Aubrey. Billiot, Barell J. Billiot, Betty. Billiot, Bobby J. Billiot, Brian K. Billiot, Cassidy. Billiot, Charles Sr. Billiot, Chris J Sr. Billiot, E J E. Billiot, Earl W Sr. Billiot, Ecton L. Billiot, Emary. Billiot, Forest Jr. Billiot, Gerald. Billiot, Harold J. Billiot, Jacco A. Billiot, Jake A. Billiot, James Jr. Billiot, Joseph S Jr. Billiot, Laurence V. Billiot, Leonard F Jr. Billiot, Lisa. Billiot, Mary L. Billiot, Paul J Sr. Billiot, Shirley L. Billiot, Steve M. Billiot, Thomas Adam. Billiot, Thomas Sr. Billiot, Wenceslaus Jr. Billiott, Alexander J. Biron, Yale. Black, William C. Blackston, Larry E. Blackwell, Wade H III. Blackwell, Wade H Jr. Blanchard, Albert. Blanchard, Andrew J. Blanchard, Billy J. Blanchard, Cyrus. Blanchard, Daniel A. Blanchard, Dean. Blanchard, Douglas Jr. Blanchard, Dwayne. Blanchard, Elgin. Blanchard, Gilbert. Blanchard, Jade.

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			Blanchard, James. Blanchard, John F Jr. Blanchard, Katie. Blanchard, Kelly. Blanchard, Matt Joseph. Blanchard, Michael. Blanchard, Quentin Timothy. Blanchard, Roger Sr. Blanchard, Walton H Jr. Bland, Quyen T. Blouin, Roy A. Blume, Jack Jr. Bodden, Arturo. Bodden, Jasper. Bollinger, Donald E. Bolotte, Darren W. Bolton, Larry F. Bondi, Paul J. Bonvillain, Jimmy J. Bonvillian, Donna M. Boone, Clifton Felix. Boone, Donald F II. Boone, Donald F III (Ricky). Boone, Gregory T. Boquet, Noriss P Jr. Boquet, Wilfred Jr. Bordelon, Glenn Sr. Bordelon, James P. Bordelon, Shelby P. Borden, Benny. Borne, Crystal. Borne, Dina L. Borne, Edward Joseph Jr. Borne, Edward Sr. Bosarge, Hubert Lawrence. Bosarge, Robert. Bosarge, Sandra. Bosarge, Steve. Boudlauch, Durel A Jr. Boudoin, Larry Terrell. Boudoin, Nathan. Boudreaux, Brent J. Boudreaux, Elvin J III. Boudreaux, James C Jr. Boudreaux, James N. Boudreaux, Jessie. Boudreaux, Leroy A. Boudreaux, Mark. Boudreaux, Paul Sr. Boudreaux, Richard D. Boudreaux, Ronald Sr. Boudreaux, Sally. Boudreaux, Veronica. Boudwin, Dwayne. Boudwin, Jewel James Sr. Boudwin, Wayne. Bouise, Norman. Boulet, Irwin J Jr. Boullion, Debra. Bourg, Allen T. Bourg, Benny. Bourg, Chad J. Bourg, Channon. Bourg, Chris. Bourg, Douglas. Bourg, Glenn A. Bourg, Jearmie Sr. Bourg, Kent A. Bourg, Mark. Bourg, Nolan P. Bourg, Ricky J. Bourgeois, Albert P. Bourgeois, Brian J Jr.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Bourgeois, Daniel. Bourgeois, Dwayne. Bourgeois, Jake. Bourgeois, Johnny M. Bourgeois, Johnny M Jr. Bourgeois, Leon A. Bourgeois, Louis A. Bourgeois, Merrie E. Bourgeois, Randy P. Bourgeois, Reed. Bourgeois, Webley. Bourn, Chris. Bourque, Murphy Paul. Bourque, Ray. Bousegard, Duvic Jr. Boutte, Manuel J Jr. Bouvier, Colbert A II. Bouzigard, Dale J. Bouzigard, Edgar J III. Bouzigard, Eeris. Bowers, Harold. Bowers, Tommy. Boyd, David E Sr. Boyd, Elbert. Boykin, Darren L. Boykin, Thomas Carol. Bradley, James. Brady, Brian. Brandhurst, Kay. Brandhurst, Ray E Sr. Brandhurst, Raymond J. Braneff, David G. Brannan, William P. Branom, Donald James Jr. Braud, James M. Brazan, Frank J. Breaud, Irvin F Jr. Breaux, Barbara. Breaux, Brian J. Breaux, Charlie M. Breaux, Clifford. Breaux, Colin E. Breaux, Daniel Jr. Breaux, Larry J. Breaux, Robert J Jr. Breaux, Shelby. Briscoe, Robert F Jr. Britsch, L D Jr. Broussard, Dwayne E. Broussard, Eric. Broussard, Keith. Broussard, Larry. Broussard, Mark A. Broussard, Roger David. Broussard, Roger R. Broussard, Steve P. Brown, Cindy B. Brown, Colleen. Brown, Donald G. Brown, John W. Brown, Paul R. Brown, Ricky. Brown, Toby H. Bruce, Adam J. Bruce, Adam J Jr. Bruce, Bob R. Bruce, Daniel M Sr. Bruce, Eli T Sr. Bruce, Emelda L. Bruce, Gary J Sr. Bruce, James P. Bruce, Lester J Jr. Bruce, Margie L.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Bruce, Mary P. Bruce, Nathan. Bruce, Robert. Bruce, Russell. Brudnock, Peter Sr. Brunet, Elton J. Brunet, Joseph A. Brunet, Joseph A. Brunet, Levy J Jr. Brunet, Raymond Sr. Bryan, David N. Bryant, Ina Fay V. Bryant, Jack D Sr. Bryant, James Larry. Buford, Ernest. Bui, Ben. Bui, Dich. Bui, Dung Thi. Bui, Huong T. Bui, Ngan. Bui, Nhuan. Bui, Nuoi Van. Bui, Tai. Bui, Tieu. Bui, Tommy. Bui, Xuan and De Nguyen. Bui, Xuanmai. Bull, Delbert E. Bundy, Belvina (Kenneth). Bundy, Kenneth Sr. Bundy, Nicky. Bundy, Ronald J. Bundy, Ronnie J. Buquet, John Jr. Buras, Clayton M. Buras, Leander. Buras, Robert M Jr. Buras, Waylon J. Burlett, Elliott C. Burlett, John C Jr. Burnell, Charles B. Burnell, Charles R. Burnham, Deanna Lea. Burns, Stuart E. Burroughs, Lindsey Hilton Jr. Burton, Ronnie. Busby, Hardy E. Busby, Tex H. Busch, RC. Bush, Robert A. Bussey, Tyler. Butcher, Dorothy. Butcher, Rocky J. Butler, Albert A. Butler, Aline M. Bychurch, Johnny. Bychurch, Johnny Jr. Cabanilla, Alex. Caboz, Jose Santos. Cacioppo, Anthony Jr. Caddell, David. Cadiere, Mae Quick. Cadiere, Ronald J. Cahill, Jack. Caillouet, Stanford Jr. Caison, Jerry Lane Jr. Calcagno, Stephen Paul Sr. Calderone, John S. Callahan, Gene P Sr. Callahan, Michael J. Callahan, Russell. Callais, Ann. Callais, Franklin D.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Callais, Gary D. Callais, Michael. Callais, Michael. Callais, Sandy. Callais, Terrence. Camardelle, Anna M. Camardelle, Chris J. Camardelle, David. Camardelle, Edward J III. Camardelle, Edward J Jr. Camardelle, Harris A. Camardelle, Knowles. Camardelle, Noel T. Camardelle, Tilman J. Caminita, John A III. Campo, Donald Paul. Campo, Kevin. Campo, Nicholas J. Campo, Roy. Campo, Roy Sr. Camus, Ernest M Jr. Canova, Carl. Cantrelle, Alvin. Cantrelle, Eugene J. Cantrelle, Otis A Sr. Cantrelle, Otis Jr (Buddy). Cantrelle, Philip A. Cantrelle, Tate Joseph. Canty, Robert Jamies. Cao, Anna. Cao, Billy. Cao, Billy Viet. Cao, Binh Quang. Cao, Chau. Cao, Dan Dien. Cao, Dung Van. Cao, Gio Van. Cao, Heip A. Cao, Linh Huyen. Cao, Nghia Thi. Cao, Nhieu V. Cao, Si-Van. Cao, Thanh Kim. Cao, Tuong Van. Carinhas, Jack G Jr. Carl, Joseph Allen. Carlos, Gregory. Carlos, Irvin. Carmadelle, David J. Carmadelle, Larry G. Carmadelle, Rudy J. Carrere, Anthony T Jr. Carrier, Larry J. Caruso, Michael. Casanova, David W Sr. Cassagne, Alphonse G III. Cassagne, Alphonse G IV. Cassidy, Mark. Casso, Joseph. Castelin, Gilbert. Castelin, Sharon. Castellanos, Raul L. Castelluccio, John A Jr. Castille, Joshua. Caulfield, Adolph Jr. Caulfield, Hope. Caulfield, James M Jr. Caulfield, Jean. Cepriano, Salvador. Cerdes, Julius W Jr. Cerise, Marla. Chabert, John. Chaisson, Dean J.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Chaisson, Henry. Chaisson, Vincent A. Chaix, Thomas B III. Champagne, Brian. Champagne, Harold P. Champagne, Kenton. Champagne, Leon J. Champagne, Leroy A. Champagne, Lori. Champagne, Timmy D. Champagne, Willard. Champlin, Kim J. Chance, Jason R. Chancey, Jeff. Chapa, Arturo. Chaplin Robert G Sr. Chaplin, Saxby Stowe. Charles, Christopher. Charpentier, Allen J. Charpentier, Alvin J. Charpentier, Daniel J. Charpentier, Lawrence. Charpentier, Linton. Charpentier, Melanie. Charpentier, Murphy Jr. Charpentier, Robert J. Chartier, Michelle. Chau, Minh Huu. Chauvin, Anthony. Chauvin, Anthony P Jr. Chauvin, Carey M. Chauvin, David James. Chauvin, James E. Chauvin, Kimberly Kay. Cheeks, Alton Bruce. Cheers, Elwood. Chenier, Ricky. Cheramie, Alan. Cheramie, Alan J Jr. Cheramie, Alton J. Cheramie, Berwick Jr. Cheramie, Berwick Sr. Cheramie, Daniel James Sr. Cheramie, Danny. Cheramie, David J. Cheramie, David P. Cheramie, Dickey J. Cheramie, Donald. Cheramie, Enola. Cheramie, Flint. Cheramie, Harold L. Cheramie, Harry J Sr. Cheramie, Harry Jr. Cheramie, Harvey Jr. Cheramie, Harvey Sr. Cheramie, Henry J Sr. Cheramie, James A. Cheramie, James P. Cheramie, Jody P. Cheramie, Joey J. Cheramie, Johnny. Cheramie, Joseph A. Cheramie, Lee Allen. Cheramie, Linton J. Cheramie, Mark A. Cheramie, Murphy J. Cheramie, Nathan A Sr. Cheramie, Neddy P. Cheramie, Nicky J. Cheramie, Ojess M. Cheramie, Paris P. Cheramie, Robbie. Cheramie, Rodney E Jr.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Cheramie, Ronald. Cheramie, Roy. Cheramie, Roy A. Cheramie, Sally K. Cheramie, Terry J. Cheramie, Terry Jr. Cheramie, Timmy. Cheramie, Tina. Cheramie, Todd M. Cheramie, Tommy. Cheramie, Wayne A. Cheramie, Wayne A Jr. Cheramie, Wayne F Sr. Cheramie, Wayne J. Cheramie, Webb Jr. Chevalier, Mitch. Chew, Thomas J. Chhun, Samantha. Chiasson, Jody J. Chiasson, Manton P Jr. Chiasson, Michael P. Childress, Gordon. Chisholm, Arthur. Chisholm, Henry Jr. Christen, David Jr. Christen, Vernon. Christmas, John T Jr. Chung, Long V. Ciaccio, Vance. Cibilic, Bozidar. Cieutat, John. Cisneros, Albino. Ciuffi, Michael L. Clark, James M. Clark, Jennings. Clark, Mark A. Clark, Ricky L. Cobb, Michael A. Cochran, Jimmy. Coleman, Ernest. Coleman, Freddie Jr. Colletti, Rodney A. Collier, Ervin J. Collier, Wade. Collins, Bernard J. Collins, Bruce J Jr. Collins, Donald. Collins, Earline. Collins, Eddie F Jr. Collins, Jack. Collins, Jack. Collins, Julius. Collins, Lawson Bruce Sr. Collins, Lindy S Jr. Collins, Logan A Jr. Collins, Robert. Collins, Timmy P. Collins, Vendon Jr. Collins, Wilbert Jr. Collins, Woodrow. Colson, Chris and Michelle. Comardelle, Michael J. Comeaux, Allen J. Compeaux, Curtis J. Compeaux, Gary P. Compeaux, Harris. Cone, Jody. Contreras, Mario. Cook, Edwin A Jr. Cook, Edwin A Sr. Cook, Joshua. Cook, Larry R Sr. Cook, Scott.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Cook, Theodore D. Cooksey, Ernest Neal. Cooper, Acy J III. Cooper, Acy J Jr. Cooper, Acy Sr. Cooper, Christopher W. Cooper, Jon C. Cooper, Marla F. Cooper, Vincent J. Copeman, John R. Corley, Ronald E. Cornett, Eddie. Cornwall, Roger. Cortez, Brenda M. Cortez, Cathy. Cortez, Curtis. Cortez, Daniel P. Cortez, Edgar. Cortez, Keith J. Cortez, Leslie J. Cosse, Robert K. Coston, Clayton. Cotsovolos, John Gordon. Coulon, Allen J Jr. Coulon, Allen J Sr. Coulon, Amy M. Coulon, Cleveland F. Coulon, Darrin M. Coulon, Don. Coulon, Earline N. Coulon, Ellis Jr. Coursey, John W. Courville, Ronnie P. Cover, Darryl L. Cowdrey, Michael Dudley. Cowdrey, Michael Nelson. Crain, Michael T. Crawford, Bryan D. Crawford, Steven J. Creamer, Quention. Credeur, Todd A Sr. Credeur, Tony J. Creppel, Carlton. Creppel, Catherine. Creppel, Craig Anthony. Creppel, Freddy. Creppel, Isadore Jr. Creppel, Julinne G III. Creppel, Kenneth. Creppel, Kenneth. Creppel, Nathan J Jr. Creppell, Michel P. Cristina, Charles J. Crochet, Sterling James. Crochet, Tony J. Crosby, Benjy J. Crosby, Darlene. Crosby, Leonard W Jr. Crosby, Ted J. Crosby, Thomas. Crum, Lonnie. Crum, Tommy Lloyd. Cruz, Jesus. Cubbage, Melinda T. Cuccia, Anthony J. Cuccia, Anthony J Jr. Cuccia, Kevin. Cumbie, Bryan E. Cure, Mike. Curole, Keith J. Curole, Kevin P. Curole, Margaret B. Curole, Willie P Jr.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Cutrer, Jason C. Cvitanovich, T. Daigle, Alfred. Daigle, Cleve and Nona. Daigle, David John. Daigle, EJ. Daigle, Glenn. Daigle, Jamie J. Daigle, Jason. Daigle, Kirk. Daigle, Leonard P. Daigle, Lloyd. Daigle, Louis J. Daigle, Melanie. Daigle, Michael J. Daigle, Michael Wayne and JoAnn. Daisy, Jeff. Dale, Cleveland L. Dang, Ba. Dang, Dap. Dang, David. Dang, Duong. Dang, Khang. Dang, Khang and Tam Phan. Dang, Loan Thi. Dang, Minh. Dang, Minh Van. Dang, Son. Dang, Tao Kevin. Dang, Thang Duc. Dang, Thien Van. Dang, Thuong. Dang, Thuy. Dang, Van D. Daniels, David. Daniels, Henry. Daniels, Leslie. Danos, Albert Sr. Danos, James A. Danos, Jared. Danos, Oliver J. Danos, Ricky P. Danos, Rodney. Danos, Timothy A. d'Antignac, Debi. d'Antignac, Jack. Dantin, Archie A. Dantin, Mark S Sr. Dantin, Stephen Jr. Dao, Paul. Dao, Vang. Dao-Nguyen, Chrysti. Darda, Albert L Jr. Darda, Gertrude. Darda, Herbert. Darda, J C. Darda, Jeremy. Darda, Tammy. Darda, Trudy. Dardar, Alvin. Dardar, Basile J. Dardar, Basile Sr. Dardar, Cindy. Dardar, David. Dardar, Donald S. Dardar, Edison J Sr. Dardar, Gayle Picou. Dardar, Gilbert B. Dardar, Gilbert Sr. Dardar, Isadore J Jr. Dardar, Jacqueline. Dardar, Jonathan M. Dardar, Lanny.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Dardar, Larry J. Dardar, Many. Dardar, Neal A. Dardar, Norbert. Dardar, Patti V. Dardar, Percy B Sr. Dardar, Rose. Dardar, Rusty J. Dardar, Samuel. Dardar, Summersgill. Dardar, Terry P. Dardar, Toney M Jr. Dardar, Toney Sr. Dargis, Stephen M. Dassau, Louis. David, Philip J Jr. Davis, Cliff. Davis, Daniel A. Davis, Danny A. Davis, James. Davis, John W. Davis, Joseph D. Davis, Michael Steven. Davis, Ronald B. Davis, William T Jr. Davis, William Theron. Dawson, JT. de la Cruz, Avery T. Dean, Ilene L. Dean, John N. Dean, Stephen. DeBarge, Brian K. DeBarge, Sherry. DeBarge, Thomas W. Decoursey, John. Dedon, Walter. Deere, Daryl. Deere, David E. Deere, Dennis H. Defelice, Robin. Defelice, Tracie L. DeHart, Ashton J Sr. Dehart, Bernard J. Dehart, Blair. Dehart, Clevis. Dehart, Clevis Jr. DeHart, Curtis P Sr. Dehart, Eura Sr. Dehart, Ferrell John. Dehart, Leonard M. DeHart, Troy. DeJean, Chris N Jr. DeJean, Chris N Sr. Dekemel, Bonnie D. Dekemel, Wm J Jr. Delande, Paul. Delande, Ten Chie. Delatte, Michael J Sr. Delaune, Kip M. Delaune, Thomas J. Delaune, Todd J. Delcambre, Carroll A. Delgado, Jesse. Delino, Carlton. Delino, Lorene. Deloach, Stephen W Jr. DeMoll, Herman J Jr. DeMoll, Herman J Sr. DeMoll, James C Jr. DeMoll, Ralph. DeMoll, Robert C. DeMoll, Terry R. DeMolle, Freddy.

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			DeMolle, Otis. Dennis, Fred. Denty, Steve. Deroche, Barbara H. Derouen, Caghe. Deshotel, Rodney. DeSilvey, David. Despaux, Byron J. Despaux, Byron J Jr. Despaux, Glen A. Despaux, Ken. Despaux, Kerry. Despaux, Suzanna. Detillier, David E. DeVaney, Bobby C Jr. Dickey, Wesley Frank. Diep, Vu. Dinger, Anita. Dinger, Corbert Sr. Dinger, Eric. Dingler, Mark H. Dinh, Chau Thanh. Dinh, Khai Duc. Dinh, Lien. Dinh, Toan. Dinh, Vincent. Dion, Ernest. Dion, Paul A. Dion, Thomas Autry. Disalvo, Paul A. Dismuke, Robert E Sr. Ditcharo, Dominick III. Dixon, David. Do, Cuong V. Do, Dan C. Do, Dung V. Do, Hai Van. Do, Hieu. Do, Hung V. Do, Hung V. Do, Johnny. Do, Kiet Van. Do, Ky Hong. Do, Ky Quoc. Do, Lam. Do, Liet Van. Do, Luong Van. Do, Minh Van. Do, Nghiep Van. Do, Ta. Do, Ta Phon. Do, Than Viet. Do, Thanh V. Do, Theo Van. Do, Thien Van. Do, Tinh A. Do, Tri. Do, Vi V. Doan, Anh Thi. Doan, Joseph. Doan, Mai. Doan, Minh. Doan, Ngoc. Doan, Tran Van. Domangue, Darryl. Domangue, Emile. Domangue, Mary. Domangue, Michael. Domangue, Paul. Domangue, Ranzell Sr. Domangue, Stephen. Domangue, Westley. Domingo, Carolyn.

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			Dominique, Amy R. Dominque, Gerald R. Donini, Ernest N. Donnelly, David C. Donohue, Holly M. Dooley, Denise F. Dopson, Craig B. Dore, Presley J. Dore, Preston J Jr. Dorr, Janthan C Jr. Doucet, Paul J Sr. Downey, Colleen. Doxey, Robert Lee Sr. Doxey, Ruben A. Doxey, William L. Doyle, John T. Drawdy, John Joseph. Drury, Bruce W Jr. Drury, Bruce W Sr. Drury, Bryant J. Drury, Eric S. Drury, Helen M. Drury, Jeff III. Drury, Kevin. Drury, Kevin S Sr. Drury, Steve R. Drury, Steven J. Dubberly, James F. Dubberly, James Michael. Dubberly, James Michael Jr. Dubberly, John J. Dubois, Euris A. Dubois, John D Jr. Dubois, Lonnie J. Duck, Kermit Paul. Dudenhefer, Anthony. Dudenhefer, Connie S. Dudenhefer, Eugene A. Dudenhefer, Milton J Jr. Duet, Brad J. Duet, Darrel A. Duet, Guy J. Duet, Jace J. Duet, Jay. Duet, John P. Duet, Larson. Duet, Ramie. Duet, Raymond J. Duet, Tammy B. Duet, Tyrone. Dufrene, Archie. Dufrene, Charles. Dufrene, Curt F. Dufrene, Elson A. Dufrene, Eric F. Dufrene, Eric F Jr. Dufrene, Eric John. Dufrene, Golden J. Dufrene, Jeremy M. Dufrene, Juliette B. Dufrene, Leroy J. Dufrene, Milton J. Dufrene, Ronald A Jr. Dufrene, Ronald A Sr. Dufrene, Scottie M. Dufrene, Toby. Dugar, Edward A II. Dugas, Donald John. Dugas, Henri J IV. Duhe, Greta. Duhe, Robert. Duhon, Charles. Duhon, Douglas P.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Duncan, Faye E. Duncan, Gary. Duncan, Loyde C. Dunn, Bob. Duong, Billy. Duong, Chamroeun. Duong, EM. Duong, Ho Tan Phi. Duong, Kong. Duong, Mau. Duplantis, Blair P. Duplantis, David. Duplantis, Frankie J. Duplantis, Maria. Duplantis, Teddy W. Duplantis, Wedgir J Jr. Duplessis, Anthony James Sr. Duplessis, Bonnie S. Duplessis, Clarence R. Dupre, Brandon P. Dupre, Cecile. Dupre, David A. Dupre, Davis J Jr. Dupre, Easton J. Dupre, Jimmie Sr. Dupre, Linward P. Dupre, Mary L. Dupre, Michael J. Dupre, Michael J Jr. Dupre, Randall P. Dupre, Richard A. Dupre, Rudy P. Dupre, Ryan A. Dupre, Tony J. Dupre, Troy A. Dupree, Bryan. Dupree, Derrick. Dupree, Malcolm J Sr. Dupuis, Clayton J. Durand, Walter Y. Dusang, Melvin A. Duval, Denval H Sr. Duval, Wayne. Dyer, Nadine D. Dyer, Tony. Dykes, Bert L. Dyson, Adley L Jr. Dyson, Adley L Sr. Dyson, Amy. Dyson, Casandra. Dyson, Clarence III. Dyson, Jimmy Jr. Dyson, Jimmy L Sr. Dyson, Kathleen. Dyson, Maricela. Dyson, Phillip II. Dyson, Phillip Sr. Dyson, William. Eckerd, Bill. Edens, Angela Blake. Edens, Donnie. Edens, Jeremy Donald. Edens, Nancy M. Edens, Steven L. Edens, Timothy Dale. Edgar, Daniel. Edgar, Joey. Edgerson, Roosevelt. Edwards,Tommy W III. Ellerbee, Jody Duane. Ellison, David Jr. Encalade, Alfred Jr. Encalade, Anthony T.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Encalade, Cary. Encalade, Joshua C. Encalade, Stanley A. Enclade, Joseph L. Enclade, Michael Sr and Jeannie Pitre. Enclade, Rodney J. Englade, Alfred. Ennis, A L Jr. Erickson, Grant G. Erlinger, Carroll. Erlinger, Gary R. Eschete, Keith A. Esfeller, Benny A. Eskine, Kenneth. Esponge, Ernest J. Estaves, David Sr. Estaves, Ricky Joseph. Estay, Allen J. Estay, Wayne. Esteves, Anthony E Jr. Estrada, Orestes. Evans, Emile J Jr. Evans, Kevin J. Evans, Lester. Evans, Lester J Jr. Evans, Tracey J Sr. Everson, George C. Eymard, Brian P Sr. Eymard, Jervis J and Carolyn B. Fabiano, Morris C. Fabra, Mark. Fabre, Alton Jr. Fabre, Ernest J. Fabre, Kelly V. Fabre, Peggy B. Fabre, Sheron. Fabre, Terry A. Fabre, Wayne M. Falcon, Mitchell J. Falgout, Barney. Falgout, Jerry P. Falgout, Leroy J. Falgout, Timothy J. Fanguy, Barry G. Fanning, Paul Jr. Farris, Thomas J. Fasone, Christopher J. Fasone, William J. Faulk, Lester J. Favaloro, Thomas J. Favre, Michael Jr. Fazende, Jeffery. Fazende, Thomas. Fazende, Thomas G. Fazzio, Anthony. Fazzio, Douglas P. Fazzio, Maxine J. Fazzio, Steve. Felarise, EJ. Felarise, Wayne A Sr. Fernandez, John. Fernandez, Laudelino. Ferrara, Audrey B. Ficarino, Dominick Jr. Fields, Bryan. Fillinich, Anthony. Fillinich, Anthony Sr. Fillinich, Jack. Fincher, Penny. Fincher, William. Fisch, Burton E. Fisher, Kelly. Fisher, Kirk.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Fisher, Kirk A. Fitch, Adam. Fitch, Clarence J Jr. Fitch, Hanson. Fitzgerald, Burnell. Fitzgerald, Kirk. Fitzgerald, Kirk D. Fitzgerald, Ricky J Jr. Fleming, John M. Fleming, Meigs F. Fleming, Mike. Flick, Dana. Flores, Helena D. Flores, Thomas. Flowers, Steve W. Flowers, Vincent F. Folse, David M. Folse, Heath. Folse, Mary L. Folse, Ronald B. Fonseca, Francis Sr. Fontaine, William S. Fontenot, Peggy D. Ford, Judy. Ford, Warren Wayne. Foreman, Ralph Jr. Foret, Alva J. Foret, Billy J. Foret, Brent J. Foret, Glenn. Foret, Houston. Foret, Jackie P. Foret, Kurt J Sr. Foret, Lovelace A Sr. Foret, Loveless A Jr. Foret, Mark M. Foret, Patricia C. Forrest, David P. Forsyth, Hunter. Forsythe, John. Fortune, Michael A. France, George J. Francis, Albert. Franklin, James K. Frankovich, Anthony. Franks, Michael. Frauenberger, Richard Wayne. Frazier, David J. Frazier, David M. Frazier, James. Frazier, Michael. Frederick, Davis. Frederick, Johnnie and Jeannie. Fredrick, Michael. Freeman, Arthur D. Freeman, Darrel P Sr. Freeman, Kenneth F. Freeman, Larry Scott. Frelich, Charles P. Frelich, Floyd J. Frelich, Kent. Frerics, Doug. Frerks, Albert R Jr. Frickey, Darell. Frickey, Darren. Frickey, Dirk I. Frickey, Eric J. Frickey, Harry J Jr. Frickey, Jimmy. Frickey, Rickey J. Frickey, Westley J. Friloux, Brad. Frisella, Jeanette M.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Frisella, Jerome A Jr. Frost, Michael R. Fruge, Wade P. Gadson, James. Gaines, Dwayne. Gala, Christine. Galjour, Jess J. Galjour, Reed. Gallardo, John W. Gallardo, Johnny M. Galliano, Anthony. Galliano, Horace J. Galliano, Joseph Sr. Galliano, Logan J. Galliano, Lynne L. Galliano, Moise Jr. Galloway, AT Jr. Galloway, Jimmy D. Galloway, Judy L. Galloway, Mark D. Galt, Giles F. Gambarella, Luvencie J. Ganoi, Kristine. Garcia, Ana Maria. Garcia, Anthony. Garcia, Edward. Garcia, Kenneth. Garner, Larry S. Gary, Dalton J. Gary, Ernest J. Gary, Leonce Jr. Garza, Andrew. Garza, Jose H. Gaskill, Elbert Clinton and Sandra. Gaspar, Timothy. Gaspard, Aaron and Hazel C. Gaspard, Dudley A Jr. Gaspard, Leonard J. Gaspard, Michael A. Gaspard, Michael Sr. Gaspard, Murry. Gaspard, Murry A Jr. Gaspard, Murry Sr. Gaspard, Murvin. Gaspard, Ronald Sr. Gaspard, Ronald Wayne Jr. Gaubert, Elizabeth. Gaubert, Gregory M. Gaubert, Melvin. Gaudet, Allen J IV. Gaudet, Ricky Jr. Gauthier, Hewitt J Sr. Gautreaux, William A. Gay, Norman F. Gay, Robert G. Gazzier, Daryl G. Gazzier, Emanuel A. Gazzier, Wilfred E. Gegenheimer, William F. Geiling, James. Geisman, Tony. Gentry, Robert. Gentry, Samuel W Jr. George, James J Jr. Gerica, Clara. Gerica, Peter. Giambrone, Corey P. Gibson, Eddie E. Gibson, Joseph. Gibson, Ronald F. Gilden, Eddie Jr. Gilden, Eddie Sr. Gilden, Inez W.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Gilden, Wayne. Gillikin, James D. Girard, Chad Paul. Giroir, Mark S. Gisclair, Anthony J. Gisclair, Anthony Joseph Sr. Gisclair, August. Gisclair, Dallas J Sr. Gisclair, Doyle A. Gisclair, Kip J. Gisclair, Ramona D. Gisclair, Wade. Gisclair, Walter. Glover, Charles D. Glynn, Larry. Goetz, George. Goings, Robert Eugene. Golden, George T. Golden, William L. Gollot, Brian. Gollot, Edgar R. Gonzales, Arnold Jr. Gonzales, Mrs Cyril E Jr. Gonzales, Rene R. Gonzales, Rudolph S Jr. Gonzales, Rudolph S Sr. Gonzales, Sylvia A. Gonzales, Tim J. Gonzalez, Jorge Jr. Gonzalez, Julio. Gordon, Donald E. Gordon, Patrick Alvin. Gore, Henry H. Gore, Isabel. Gore, Pam. Gore, Thomas L. Gore, Timothy Ansel. Gottschalk, Gregory. Gourgues, Harold C Jr. Goutierrez, Tony C. Govea, Joaquin. Graham, Darrell. Graham, Steven H. Granger, Albert J Sr. Granich, James. Granier, Stephen J. Grass, Michael. Graves, Robert N Sr. Gray, Jeannette. Gray, Monroe. Gray, Shirley E. Gray, Wayne A Sr. Graybill, Ruston. Green, Craig X. Green, James W. Green, James W Jr. Green, Shaun. Greenlaw, W C Jr. Gregoire, Ernest L. Gregoire, Rita M. Gregory, Curtis B. Gregory, Mercedes E. Grice, Raymond L Jr. Griffin, Alden J Sr. Griffin, Craig. Griffin, David D. Griffin, Elvis Joseph Jr. Griffin, Faye. Griffin, Faye Ann. Griffin, Jimmie J. Griffin, Nolty J. Griffin, Rickey. Griffin, Sharon.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Griffin, Timothy. Griffin, Troy D. Groff, Alfred A. Groff, John A. Groover, Hank. Gros, Brent J Sr. Gros, Craig J. Gros, Danny A. Gros, Gary Sr. Gros, Junius A Jr. Gros, Keven. Gros, Michael A. Gross, Homer. Grossie, Janet M. Grossie, Shane A. Grossie, Tate. Grow, Jimmie C. Guenther, John J. Guenther, Raphael. Guerra, Bruce. Guerra, Chad L. Guerra, Fabian C. Guerra, Guy A. Guerra, Jerry V Sr. Guerra, Kurt P Sr. Guerra, Ricky J Sr. Guerra, Robert. Guerra, Ryan. Guerra, Troy A. Guerra, William Jr. Guidroz, Warren J. Guidry, Alvin A. Guidry, Andy J. Guidry, Arthur. Guidry, Bud. Guidry, Calvin P. Guidry, Carl J. Guidry, Charles J. Guidry, Chris J. Guidry, Clarence P. Guidry, Clark. Guidry, Clint. Guidry, Clinton P Jr. Guidry, Clyde A. Guidry, David. Guidry, Dobie. Guidry, Douglas J Sr. Guidry, Elgy III. Guidry, Elgy Jr. Guidry, Elwin A Jr. Guidry, Gerald A. Guidry, Gordon Jr. Guidry, Guillaume A. Guidry, Harold. Guidry, Jason. Guidry, Jessie J. Guidry, Jessie Joseph. Guidry, Jonathan B. Guidry, Joseph T Jr. Guidry, Keith M. Guidry, Kenneth J. Guidry, Kerry A. Guidry, Marco. Guidry, Maurin T and Tamika. Guidry, Michael J. Guidry, Nolan J Sr. Guidry, Randy Peter Sr. Guidry, Rhonda S. Guidry, Robert C. Guidry, Robert Joseph. Guidry, Robert Wayne. Guidry, Roger. Guidry, Ronald.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Guidry, Roy Anthony. Guidry, Roy J. Guidry, Tammy. Guidry, Ted. Guidry, Thomas P. Guidry, Timothy. Guidry, Troy. Guidry, Troy. Guidry, Ulysses. Guidry, Vicki. Guidry, Wayne J. Guidry, Wyatt. Guidry, Yvonne. Guidry-Calva, Holly A. Guilbeaux, Donald J. Guilbeaux, Lou. Guillie, Shirley. Guillory, Horace H. Guillot, Benjamin J Jr. Guillot, Rickey A. Gulledge, Lee. Gutierrez, Anita. Guy, Jody. Guy, Kimothy Paul. Guy, Wilson. Ha, Cherie Lan. Ha, Co Dong. Ha, Lai Thuy Thi. Ha, Lyanna. Hadwall, John R. Hafford, Johnny. Hagan, Jules. Hagan, Marianna. Haiglea, Robbin Richard. Hales, William E. Halili, Rhonda L. Hall, Byron S. Hall, Darrel T Sr. Hall, Lorrie A. Hammer, Michael P. Hammock, Julius Michael. Hancock, Jimmy L. Handlin, William Sr. Hang, Cam T. Hansen, Chris. Hansen, Eric P. Hanson, Edmond A. Harbison, Louis. Hardee, William P. Hardison, Louis. Hardy John C. Hardy, Sharon. Harmon, Michelle. Harrington, George J. Harrington, Jay. Harris, Bobby D. Harris, Buster. Harris, Jimmy Wayne Sr. Harris, Johnny Ray. Harris, Kenneth A. Harris, Ronnie. Harris, Susan D. Harris, William. Harrison, Daniel L. Hartmann, Leon M Jr. Hartmann, Walter Jr. Hattaway, Errol Henry. Haycock, Kenneth. Haydel, Gregory. Hayes, Clinton. Hayes, Katherine F. Hayes, Lod Jr. Hean, Hong.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Heathcock, Walter Jr. Hebert, Albert Joseph. Hebert, Bernie. Hebert, Betty Jo. Hebert, Chris. Hebert, Craig J. Hebert, David. Hebert, David Jr. Hebert, Earl J. Hebert, Eric J. Hebert, Jack M. Hebert, Johnny Paul. Hebert, Jonathan. Hebert, Jules J. Hebert, Kim M. Hebert, Lloyd S III. Hebert, Michael J. Hebert, Myron A. Hebert, Norman. Hebert, Patrick. Hebert, Patrick A. Hebert, Pennington Jr. Hebert, Philip. Hebert, Robert A. Hebert, Terry W. Hedrick, Gerald J Jr. Helmer, Claudia A. Helmer, Gerry J. Helmer, Herman C Jr. Helmer, Kenneth. Helmer, Larry J Sr. Helmer, Michael A Sr. Helmer, Rusty L. Helmer, Windy. Hemmenway, Jack. Henderson, Brad. Henderson, Curtis. Henderson, David A Jr. Henderson, David A Sr. Henderson, Johnny. Henderson, Olen. Henderson, P Loam. Henry, Joanne. Henry, Rodney. Herbert, Patrick and Terry. Hereford, Rodney O Jr. Hereford, Rodney O Sr. Hernandez, Corey. Herndon, Mark. Hertel, Charles W. Hertz, Edward C Sr. Hess, Allen L Sr. Hess, Henry D Jr. Hess, Jessica R. Hess, Wayne B. Hewett, Emma. Hewett, James. Hickman, John. Hickman, Marvin. Hicks, Billy M. Hicks, James W. Hicks, Larry W. Hicks, Walter R. Hien, Nguyen. Higgins, Joseph J III. Hill, Darren S. Hill, Joseph R. Hill, Sharon. Hill, Willie E Jr. Hills, Herman W. Hingle, Barbara E. Hingle, Rick A. Hingle, Roland T Jr.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Hingle, Roland T Sr. Hingle, Ronald J. Hinojosa, R. Hinojosa, Randy. Hinojosa, Ricky A. Hipps, Nicole Marie. Ho, Dung Tan. Ho, Hung. Ho, Jennifer. Ho, Jimmy. Ho, Lam. Ho, Nam. Ho, Nga T. Ho, O. Ho, Sang N. Ho, Thanh Quoc. Ho, Thien Dang. Ho, Tien Van. Ho, Tri Tran. Hoang, Dung T. Hoang, Hoa T and Tam Hoang. Hoang, Huy Van. Hoang, Jennifer Vu. Hoang, John. Hoang, Julie. Hoang, Kimberly. Hoang, Linda. Hoang, Loan. Hoang, San Ngoc. Hoang, Tro Van. Hoang, Trung Kim. Hoang, Trung Tuan. Hoang, Vincent Huynh. Hodges, Ralph W. Hoffpaviiz, Harry K. Holland, Vidal. Holler, Boyce Dwight Jr. Hollier, Dennis J. Holloway, Carl D. Hong, Tai Van. Hood, Malcolm. Hopton, Douglas. Horaist, Shawn P. Hostetler, Warren L II. Hotard, Claude. Hotard, Emile J Jr. Howard, Jeff. Howerin, Billy Sr. Howerin, Wendell Sr. Hubbard, Keith. Hubbard, Perry III. Huber, Berry T. Huber, Charles A. Huck, Irma Elaine. Huck, Steven R. Huckabee, Harold. Hue, Patrick A. Hughes, Brad J. Hults, Thomas. Hutcherson, Daniel J. Hutchinson, Douglas. Hutchinson, George D. Hutchinson, William H. Hutto, Cynthia E. Hutto, Henry G Jr. Huynh, Chien Thi. Huynh, Dong Xuan. Huynh, Dung. Huynh, Dung V. Huynh, Hai. Huynh, Hai. Huynh, Hai Van. Huynh, Hoang D.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Huynh, Hoang Van. Huynh, Hung. Huynh, James N. Huynh, Johhny Hiep. Huynh, Johnnie. Huynh, Kim. Huynh, Lay. Huynh, Long. Huynh, Mack Van. Huynh, Mau Van. Huynh, Minh. Huynh, Minh Van. Huynh, Nam Van. Huynh, Thai. Huynh, Tham Thi. Huynh, Thanh. Huynh, The V. Huynh, Tri. Huynh, Truc. Huynh, Tu. Huynh, Tu. Huynh, Tung Van. Huynh, Van X. Huynh, Viet Van. Huynh, Vuong Van. Hymel, Joseph Jr. Hymel, Michael D. Hymel, Nolan J Sr. Ingham, Herbert W. Inglis, Richard M. Ingraham, Joseph S. Ingraham, Joyce. Ipock, Billy. Ipock, William B. Ireland, Arthur Allen. Iver, George Jr. Jackson, Alfred M. Jackson, Carl John. Jackson, David. Jackson, Eugene O. Jackson, Glenn C Jr. Jackson, Glenn C Sr. Jackson, James Jerome. Jackson, John D. Jackson, John Elton Sr. Jackson, Levi. Jackson, Nancy L. Jackson, Robert W. Jackson, Shannon. Jackson, Shaun C. Jackson, Steven A. Jacob, Ronald R. Jacob, Warren J Jr. Jacobs, L Anthony. Jacobs, Lawrence F. Jarreau, Billy and Marilyn. Jarvis, James D. Jaye, Emma. Jeanfreau, Vincent R. Jefferies, William. Jemison, Timothy Michael Sr. Jennings, Jacob. Joffrion, Harold J Jr. Johnson, Albert F. Johnson, Ashley Lamar. Johnson, Bernard Jr. Johnson, Brent W. Johnson, Bruce Warem. Johnson, Carl S. Johnson, Carolyn. Johnson, Clyde Sr. Johnson, David G. Johnson, David Paul.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Johnson, Gary Allen Sr. Johnson, George D. Johnson, Michael A. Johnson, Randy J. Johnson, Regenia. Johnson, Robert. Johnson, Ronald Ray Sr. Johnson, Steve. Johnson, Thomas Allen Jr. Johnston, Ronald. Joly, Nicholas J Jr. Jones, Charles. Jones, Clinton. Jones, Daisy Mae. Jones, Jeffery E. Jones, Jerome N Sr. Jones, John W. Jones, Larry. Jones, Len. Jones, Michael G Sr. Jones, Paul E. Jones, Perry T Sr. Jones, Ralph William. Jones, Richard G Sr. Jones, Stephen K. Jones, Wayne. Joost, Donald F. Jordan, Dean. Jordan, Hubert William III (Bert). Jordan, Hurbert W Jr. Judalet, Ramon G. Judy, William Roger. Julian, Ida. Julian, John I Sr. Juneau, Anthony Sr. Juneau, Bruce. Juneau, Robert A Jr and Laura K. Jurjevich, Leander J. Kain, Jules B Sr. Kain, Martin A. Kalliainen, Dale. Kalliainen, Richard. Kang, Chamroeun. Kang, Sambo. Kap, Brenda. Keen, Robert Steven. Keenan, Robert M. Kellum, Kenneth Sr. Kellum, Larry Gray Sr. Kellum, Roxanne. Kelly, Roger B. Kelly, Thomas E. Kendrick, Chuck J. Kennair, Michael S. Kennedy, Dothan. Kenney, David Jr. Kenney, Robert W. Kent, Michael A. Keo, Bunly. Kerchner, Steve. Kern, Thurmond. Khin, Sochenda. Khui, Lep and Nga Ho. Kidd, Frank. Kiesel, Edward C and Lorraine T. Kiff, Hank J. Kiff, Melvin. Kiffe, Horace. Kim, Puch. Kimbrough, Carson. Kim-Tun, Soeun. King, Andy A. King, Donald Jr.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			King, James B. King, Thornell. King, Wesley. Kit, An. Kizer, Anthony J. Kleimann, Robert. Knapp, Alton P Jr. Knapp, Alton P Sr. Knapp, Ellis L Jr. Knapp, Melvin L. Knapp, Theresa. Knecht, Frederick Jr. Knezek, Lee. Knight, George. Knight, Keith B. Knight, Robert E. Koch, Howard J. Kong, Seng. Konitz, Bobby. Koo, Herman. Koonce, Curtis S. Koonce, Howard N. Kopszywa, Mark L. Kopszywa, Stanley J. Kotulja, Stejepan. Kraemer, Bridget. Kraemer, Wilbert J. Kraemer, Wilbert Jr. Kramer, David. Krantz, Arthur Jr. Krantz, Lori. Kraver, C W. Kreger, Ronald A Sr. Kreger, Roy J Sr. Kreger, Ryan A. Krennerich, Raymond A. Kroke, Stephen E. Kruth, Frank D. Kuchler, Alphonse L III. Kuhn, Bruce A Sr. Kuhn, Gerard R Jr. Kuhn, Gerard R Sr. Kuhns, Deborah. LaBauve, Kerry. LaBauve, Sabrina. LaBauve, Terry. LaBiche, Todd A. LaBove, Carroll. LaBove, Frederick P. Lachica, Jacqueline. Lachico, Douglas. Lacobon, Tommy W Jr. Lacobon, Tony C. LaCoste, Broddie. LaCoste, Carl. LaCoste, Dennis E. LaCoste, Grayland J. LaCoste, Malcolm Jr. LaCoste, Melvin. LaCoste, Melvin W Jr. LaCoste, Ravin J Jr. LaCoste, Ravin Sr. Ladner, Clarence J III. Ladson, Earlene G. LaFont, Douglas A Sr. LaFont, Edna S. LaFont, Jackin. LaFont, Noces J Jr. LaFont, Weyland J Sr. LaFrance, Joseph T. Lagarde, Frank N. Lagarde, Gary Paul. Lagasse, Michael F.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Lai, Hen K. Lai, Then. Lam, Cang Van. Lam, Cui. Lam, Dong Van. Lam, Hiep Tan. Lam, Lan Van. Lam, Lee Phenh. Lam, Phan. Lam, Qui. Lam, Sochen. Lam, Tai. Lam, Tinh Huu. Lambas, Jessie J Sr. Lanclos, Paul. Landry, David A. Landry, Dennis J. Landry, Edward N Jr. Landry, George. Landry, George M. Landry, James F. Landry, Jude C. Landry, Robert E. Landry, Ronald J. Landry, Samuel J Jr. Landry, Tracy. Lane, Daniel E. Lapeyrouse, Lance M. Lapeyrouse, Rosalie. Lapeyrouse, Tillman Joseph. LaRive, James L Jr. LaRoche, Daniel S. Lasseigne, Betty. Lasseigne, Blake. Lasseigne, Floyd. Lasseigne, Frank. Lasseigne, Harris Jr. Lasseigne, Ivy Jr. Lasseigne, Jefferson. Lasseigne, Jefferson P Jr. Lasseigne, Johnny J. Lasseigne, Marlene. Lasseigne, Nolan J. Lasseigne, Trent. Lat, Chhiet. Latapie, Charlotte A. Latapie, Crystal. Latapie, Jerry. Latapie, Joey G. Latapie, Joseph. Latapie, Joseph F Sr. Latapie, Travis. Latiolais, Craig J. Latiolais, Joel. Lau, Ho Thanh. Laughlin, James G. Laughlin, James Mitchell. Laurent, Yvonne M. Lavergne, Roger. Lawdros, Terrance Jr. Layrisson, Michael A III. Le, Amanda. Le, An Van. Le, Ben. Le, Binh T. Le, Cheo Van. Le, Chinh Thanh. Le, Chinh Thanh and Yen Vo. Le, Cu Thi. Le, Dai M. Le, Dale. Le, David Rung. Le, Du M.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Le, Duc V. Le, Duoc M. Le, Hien V. Le, Houston T. Le, Hung. Le, Jimmy. Le, Jimmy and Hoang. Le, Khoa. Le, Kim. Le, Ky Van. Le, Lang Van. Le, Lily. Le, Lisa Tuyet Thi. Le, Loi. Le, Minh Van. Le, Muoi Van. Le, My. Le, My V. Le, Nam and Xhan-Minh Le. Le, Nam Van. Le, Nhieu T. Le, Nhut Hoang. Le, Nu Thi. Le, Phuc Van. Le, Que V. Le, Quy. Le, Robert. Le, Sam Van. Le, Sau V. Le, Son. Le, Son. Le, Son H. Le, Son Quoc. Le, Son Van. Le, Su. Le, Tam V. Le, Thanh Huong. Le, Tong Minh. Le, Tony. Le, Tracy Lan Chi. Le, Tuan Nhu. Le, Viet Hoang. Le, Vui. Leaf, Andrew Scott. Leary, Roland. LeBeauf, Thomas. LeBlanc, Donnie. LeBlanc, Edwin J. LeBlanc, Enoch P. LeBlanc, Gareth R III. LeBlanc, Gareth R Jr. LeBlanc, Gerald E. LeBlanc, Hubert C. LeBlanc, Jerald. LeBlanc, Jesse Jr. LeBlanc, Keenon Anthony. LeBlanc, Lanvin J. LeBlanc, Luke A. LeBlanc, Marty J. LeBlanc, Marty J Jr. LeBlanc, Mickel J. LeBlanc, Robert Patrick. LeBlanc, Scotty M. LeBlanc, Shelton. LeBlanc, Terry J. LeBoeuf, Brent J. LeBoeuf, Emery J. LeBoeuf, Joseph R. LeBoeuf, Tammy Y. LeBouef, Dale. LeBouef, Edward J. LeBouef, Ellis J Jr. LeBouef, Gillis.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			LeBouef, Jimmie. LeBouef, Leslie. LeBouef, Lindy J. LeBouef, Micheal J. LeBouef, Raymond. LeBouef, Tommy J. LeBouef, Wiley Sr. LeBourgeois, Stephen A. LeCompte, Alena. LeCompte, Aubrey J. LeCompte, Etha. LeCompte, Jesse C Jr. LeCompte, Jesse Jr. LeCompte, Jesse Sr. LeCompte, Lyle. LeCompte, Patricia F. LeCompte, Todd. LeCompte, Troy A Sr. Ledet, Brad. Ledet, Bryan. Ledet, Carlton. Ledet, Charles J. Ledet, Jack A. Ledet, Kenneth A. Ledet, Mark. Ledet, Maxine B. Ledet, Mervin. Ledet, Phillip John. Ledoux, Dennis. Ledwig, Joe J. Lee, Carl. Lee, James K. Lee, Marilyn. Lee, Otis M Jr. Lee, Raymond C. Lee, Robert E. Lee, Steven J. Leek, Mark A. LeGaux, Roy J Jr. Legendre, Kerry. Legendre, Paul. Leger, Andre. LeGros, Alex M. LeJeune, Philip Jr. LeJeune, Philip Sr. LeJeune, Ramona V. LeJeunee, Debbie. LeJuine, Eddie R. LeLand, Allston Bochet. Leland, Rutledge B III. Leland, Rutledge B Jr. LeLeaux, David. Leleux, Kevin J. Lemoine, Jeffery Jr. Leonard, Dan. Leonard, Dexter J Jr. Leonard, Micheal A. Lepine, Leroy L. Lesso, Rudy Jr. Lester, Shawn. Levron, Dale T. Levy, Patrick T. Lewis, Kenneth. Lewis, Mark Steven. Libersat, Anthony R. Libersat, Kim. Licatino, Daniel Jr. Lichenstein, Donald L. Lilley, Douglas P. Lim, Chhay. Lim, Koung. Lim, Tav Seng. Linden, Eric L.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Liner, Claude J Jr. Liner, Harold. Liner, Jerry. Liner, Kevin. Liner, Michael B Sr. Liner, Morris T Jr. Liner, Morris T Sr. Liner, Tandy M. Linh, Pham. Linwood, Dolby. Lirette, Alex J Sr. Lirette, Bobby and Sheri. Lirette, Chester Patrick. Lirette, Daniel J. Lirette, Dean J. Lirette, Delvin J Jr. Lirette, Delvin Jr. Lirette, Desaire J. Lirette, Eugis P Sr. Lirette, Guy A. Lirette, Jeannie. Lirette, Kern A. Lirette, Ron C. Lirette, Russell (Chico) Jr. Lirette, Shaun Patrick. Lirette, Terry J Sr. Little, William A. Little, William Boyd. Liv, Niem S. Livaudais, Ernest J. Liverman, Harry R. LoBue, Michael Anthony Sr. Locascio, Dustin. Lockhart, William T. Lodrigue, Jimmy A. Lodrigue, Kerry. Lombardo, Joseph P. Lombas, James A Jr. Lombas, Kim D. Londrie, Harley. Long, Cao Thanh. Long, Dinh. Long, Robert. Longo, Ronald S Jr. Longwater, Ryan Heath. Loomer, Rhonda. Lopez, Celestino. Lopez, Evelio. Lopez, Harry N. Lopez, Ron. Lopez, Scott. Lopez, Stephen R Jr. Lord, Michael E Sr. Loupe, George Jr. Loupe, Ted. Lovell, Billy. Lovell, Bobby Jason. Lovell, Bradford John. Lovell, Charles J Jr. Lovell, Clayton. Lovell, Douglas P. Lovell, Jacob G. Lovell, Lois. Lovell, Slade M. Luke, Bernadette C. Luke, David. Luke, Dustan. Luke, Henry. Luke, Jeremy Paul. Luke, Keith J. Luke, Patrick A. Luke, Patrick J. Luke, Paul Leroy.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Luke, Rudolph J. Luke, Samantha. Luke, Sidney Jr. Luke, Terry Patrick Jr. Luke, Terry Patrick Sr. Luke, Timothy. Luke, Wiltz J. Lund, Ora G. Luneau, Ferrell J. Luong, Kevin. Luong, Thu X. Luscy, Lydia. Luscy, Richard. Lutz, William A. Luu, Binh. Luu, Vinh. Luu, Vinh V. Ly, Bui. Ly, Hen. Ly, Hoc. Ly, Kelly D. Ly, Nu. Ly, Sa. Ly, Ven. Lyall, Rosalie. Lycett, James A. Lyons, Berton J. Lyons, Berton J Sr. Lyons, Jack. Lyons, Jerome M. Mackey, Marvin Sr. Mackie, Kevin L. Maggio, Wayne A. Magwood, Edwin Wayne. Mai, Danny V. Mai, Lang V. Mai, Tai. Mai, Trach Xuan. Maise, Rubin J. Maise, Todd. Majoue, Ernest J. Majoue, Nathan L. Malcombe, David. Mallett, Irvin Ray. Mallett, Jimmie. Mallett, Lawrence J. Mallett, Mervin B. Mallett, Rainbow. Mallett, Stephney. Malley, Ned F Jr. Mamolo, Charles H Sr. Mamolo, Romeo C Jr. Mamolo, Terry A. Mancera, Jesus. Manuel, Joseph R. Manuel, Shon. Mao, Chandarasy. Mao, Kim. Marcel, Michelle. Marchese, Joe Jr. Mareno, Ansley. Mareno, Brent J. Mareno, Kenneth L. Marie, Allen J. Marie, Marty. Marmande, Al. Marmande, Alidore. Marmande, Denise. Marquize, Heather. Marquizz, Kip. Marris, Roy C Jr. Martin, Darren. Martin, Dean J.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Martin, Dennis. Martin, Jody W. Martin, John F III. Martin, Michael A. Martin, Nora S. Martin, Rod J. Martin, Roland J Jr. Martin, Russel J Sr. Martin, Sharon J. Martin, Tanna G. Martin, Wendy. Martinez, Carl R. Martinez, Henry. Martinez, Henry Joseph. Martinez, Lupe. Martinez, Michael. Martinez, Rene J. Mason, James F Jr. Mason, Johnnie W. Mason, Luther. Mason, Mary Lois. Mason, Percy D Jr. Mason, Walter. Matherne, Anthony. Matherne, Blakland Sr. Matherne, Bradley J. Matherne, Claude I Jr. Matherne, Clifford P. Matherne, Curlis J. Matherne, Forest J. Matherne, George J. Matherne, Glenn A. Matherne, Grace L. Matherne, James C. Matherne, James J Jr. Matherne, James J Sr. Matherne, Joey A. Matherne, Keith. Matherne, Larry Jr. Matherne, Louis M Sr. Matherne, Louis Michael. Matherne, Nelson. Matherne, Thomas G. Matherne, Thomas G Jr. Matherne, Thomas Jr. Matherne, Thomas M Sr. Matherne, Wesley J. Mathews, Patrick. Mathurne, Barry. Matte, Martin J Sr. Mauldin, Johnny. Mauldin, Mary. Mauldin, Shannon. Mavar, Mark D. Mayeux, Lonies A Jr. Mayeux, Roselyn P. Mayfield, Gary. Mayfield, Henry A Jr. Mayfield, James J III. Mayon, Allen J. Mayon, Wayne Sr. McAnespy, Henry. McAnespy, Louis. McCall, Marcus H. McCall, R Terry Sr. McCarthy, Carliss. McCarthy, Michael. McCauley, Byron Keith. McCauley, Katrina. McClantoc, Robert R and Debra. McClellan, Eugene Gardner. McCormick, Len. McCuiston, Denny Carlton.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			McDonald, Allan. McElroy, Harry J. McFarlain, Merlin J Jr. McGuinn, Dennis. McIntosh, James Richard. McIntyre, Michael D. McIver, John H Jr. McKendree, Roy. McKenzie, George B. McKinzie, Bobby E. McKoin, Robert. McKoin, Robert F Jr. McLendon, Jonathon S. McNab, Robert Jr. McQuaig, Don W. McQuaig, Oliver J. Medine, David P. Mehaffey, John P. Melancon, Brent K. Melancon, Neva. Melancon, Rickey. Melancon, Roland Jr. Melancon, Roland T Jr. Melancon, Sean P. Melancon, Terral J. Melancon, Timmy J. Melanson, Ozimea J III. Melerine, Angela. Melerine, Brandon T. Melerine, Claude A. Melerine, Claude A Jr. Melerine, Dean J. Melerine, Eric W Jr. Melerine, John D Sr. Melerine, Linda C. Melerine, Raymond Joseph. Melford, Daniel W Sr. Mello, Nelvin. Men, Sophin. Menendez, Wade E. Menesses, Dennis. Menesses, James H. Menesses, Jimmy. Menesses, Louis. Menge, Lionel A. Menge, Vincent J. Mercy, Dempsey. Merrick, Harold A. Merrick, Kevin Sr. Merritt, Darren Sr. Messer, Chase. Meyers, Otis J. Miarm, Soeum. Michel, Steven D. Middleton, Dan Sr. Migues, Henry. Migues, Kevin L Sr. Milam, Ricky. Miles, Ricky David. Miley, Donna J. Militello, Joseph. Miller, David W. Miller, Fletcher N. Miller, James A. Miller, Larry B. Miller, Mabry Allen Jr. Miller, Michael E. Miller, Michele K. Miller, Randy A. Miller, Rhonda E. Miller, Wayne. Millet, Leon B. Millington, Donnie.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Millington, Ronnie. Millis, Moses. Millis, Raeford. Millis, Timmie Lee. Mine, Derrick. Miner, Peter G. Minh, Kha. Minh, Phuc-Truong. Mitchell, Ricky Allen. Mitchell, Todd. Mitchum, Francis Craig. Mixon, G C. Mobley, Bryan A. Mobley, Jimmy Sr. Mobley, Robertson. Mock, Frank Sr. Mock, Frankie E Jr. Mock, Jesse R II. Mock, Terry Lyn. Molero, Louis F III. Molero, Louis Frank. Molinere, Al L. Molinere, Floyd. Molinere, Roland Jr. Molinere, Stacey. Moll, Angela. Moll, Jerry J Jr. Moll, Jonathan P. Moll, Julius J. Moll, Randall Jr. Mollere, Randall. Mones, Philip J Jr. Mones, Tino. Moody, Guy D. Moore, Carl Stephen. Moore, Curtis L. Moore, Kenneth. Moore, Richard. Moore, Willis. Morales, Anthony. Morales, Clinton A. Morales, Daniel Jr. Morales, Daniel Sr. Morales, David. Morales, Elwood J Jr. Morales, Eugene J Jr. Morales, Eugene J Sr. Morales, Kimberly. Morales, Leonard L. Morales, Phil J Jr. Morales, Raul. Moran, Scott. Moreau, Allen Joseph. Moreau, Berlin J Sr. Moreau, Daniel R. Moreau, Hubert J. Moreau, Mary. Moreau, Rickey J Sr. Morehead, Arthur B Jr. Moreno, Ansley. Morgan, Harold R. Morici, John. Morris, Herbert Eugene. Morris, Jesse A. Morris, Jesse A Sr. Morris, Preston. Morrison, Stephen D Jr. Morton, Robert A. Morvant, Keith M. Morvant, Patsy Lishman. Moschettieri, Chalam. Moseley, Kevin R. Motley, Michele.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Mouille, William L. Mouton, Ashton J. Moveront, Timothy. Mund, Mark. Murphy, Denis R. Muth, Gary J Sr. Myers, Joseph E Jr. Na, Tran Van. Naccio, Andrew. Nacio, Lance M. Nacio, Noel. Nacio, Philocles J Sr. Naquin, Alton J. Naquin, Andrew J Sr. Naquin, Antoine Jr. Naquin, Autry James. Naquin, Bobby J and Sheila. Naquin, Bobby Jr. Naquin, Christine. Naquin, Dean J. Naquin, Donna P. Naquin, Earl. Naquin, Earl L. Naquin, Freddie. Naquin, Gerald. Naquin, Henry. Naquin, Irvin J. Naquin, Jerry Joseph Jr. Naquin, Kenneth J Jr. Naquin, Kenneth J Sr. Naquin, Linda L. Naquin, Lionel A Jr. Naquin, Mark D Jr. Naquin, Marty J Sr. Naquin, Milton H IV. Naquin, Oliver A. Naquin, Robert. Naquin, Roy A. Naquin, Vernon. Navarre, Curtis J. Navero, Floyd G Jr. Neal, Craig A. Neal, Roy J Jr. Neely, Bobby H. Nehlig, Raymond E Sr. Neil, Dean. Neil, Jacob. Neil, Julius. Neil, Robert J Jr. Neil, Tommy Sr. Nelson, Billy J Sr. Nelson, Deborah. Nelson, Elisha W. Nelson, Ernest R. Nelson, Faye. Nelson, Fred H Sr. Nelson, Gordon Kent Sr. Nelson, Gordon W III. Nelson, Gordon W Jr. Nelson, John Andrew. Nelson, William Owen Jr. Nelton, Aaron J Jr. Nelton, Steven J. Nettleton, Cody. Newell, Ronald B. Newsome, Thomas E. Newton, Paul J. Nghiem, Billy. Ngo, Chuong Van. Ngo, Duc. Ngo, Hung V. Ngo, Liem Thanh. Ngo, Maxie.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Ngo, The T. Ngo, Truong Dinh. Ngo, Van Lo. Ngo, Vu Hoang. Ngoc, Lam Lam. Ngu,Thoi. Nguyen, Amy. Nguyen, An Hoang. Nguyen, Andy Dung. Nguyen, Andy T. Nguyen, Anh and Thanh D Tiet. Nguyen, Ba. Nguyen, Ba Van. Nguyen, Bac Van. Nguyen, Bao Q. Nguyen, Bay Van. Nguyen, Be. Nguyen, Be. Nguyen, Be. Nguyen, Be Em. Nguyen, Bich Thao. Nguyen, Bien V. Nguyen, Binh. Nguyen, Binh Cong. Nguyen, Binh V. Nguyen, Binh Van. Nguyen, Binh Van. Nguyen, Binh Van. Nguyen, Bui Van. Nguyen, Ca Em. Nguyen, Can. Nguyen, Can Van. Nguyen, Canh V. Nguyen, Charlie. Nguyen, Chien. Nguyen, Chien Van. Nguyen, Chin. Nguyen, Chinh Van. Nguyen, Christian. Nguyen, Chuc. Nguyen, Chung. Nguyen, Chung Van. Nguyen, Chuong Hoang. Nguyen, Chuong V. Nguyen, Chuyen. Nguyen, Coolly Dinh. Nguyen, Cuong. Nguyen, Dai. Nguyen, Dan T. Nguyen, Dan Van. Nguyen, Dan Van. Nguyen, Dang. Nguyen, Danny. Nguyen, David. Nguyen, Day Van. Nguyen, De Van. Nguyen, Den. Nguyen, Diem. Nguyen, Dien. Nguyen, Diep. Nguyen, Dinh. Nguyen, Dinh V. Nguyen, Dong T. Nguyen, Dong Thi. Nguyen, Dong X. Nguyen, Duc. Nguyen, Duc Van. Nguyen, Dung. Nguyen, Dung Anh and Xuan Duong. Nguyen, Dung Ngoc. Nguyen, Dung Van. Nguyen, Dung Van. Nguyen, Duoc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Nguyen, Duong V. Nguyen, Duong Van. Nguyen, Duong Xuan. Nguyen, Francis N. Nguyen, Frank. Nguyen, Gary. Nguyen, Giang T. Nguyen, Giang Truong. Nguyen, Giau Van. Nguyen, Ha T. Nguyen, Ha Van. Nguyen, Hai Van. Nguyen, Hai Van. Nguyen, Han Van. Nguyen, Han Van. Nguyen, Hang. Nguyen, Hanh T. Nguyen, Hao Van. Nguyen, Harry H. Nguyen, Henri Hiep. Nguyen, Henry-Trang. Nguyen, Hien. Nguyen, Hien V. Nguyen, Hiep. Nguyen, Ho. Nguyen, Ho V. Nguyen, Hoa. Nguyen, Hoa. Nguyen, Hoa N. Nguyen, Hoa Van. Nguyen, Hoang. Nguyen, Hoang. Nguyen, Hoang T. Nguyen, Hoi. Nguyen, Hon Xuong. Nguyen, Huan. Nguyen, Hung. Nguyen, Hung. Nguyen, Hung. Nguyen, Hung M. Nguyen, Hung Manh. Nguyen, Hung Van. Nguyen, Hung-Joseph. Nguyen, Huu Nghia. Nguyen, Hy Don N. Nguyen, Jackie Tin. Nguyen, James. Nguyen, James N. Nguyen, Jefferson. Nguyen, Jennifer. Nguyen, Jimmy. Nguyen, Jimmy. Nguyen, Joachim. Nguyen, Joe. Nguyen, John R. Nguyen, John Van. Nguyen, Johnny. Nguyen, Joseph Minh. Nguyen, Kenny Hung Mong. Nguyen, Kevin. Nguyen, Khai. Nguyen, Khanh. Nguyen, Khanh and Viet Dinh. Nguyen, Khanh Q. Nguyen, Khiem. Nguyen, Kien Phan. Nguyen, Kim. Nguyen, Kim Mai. Nguyen, Kim Thoa. Nguyen, Kinh V. Nguyen, Lai. Nguyen, Lai. Nguyen, Lai Tan.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Nguyen, Lam. Nguyen, Lam Van. Nguyen, Lam Van. Nguyen, Lam Van. Nguyen, Lan. Nguyen, Lang. Nguyen, Lang. Nguyen, Lanh. Nguyen, Lap Van. Nguyen, Lap Van. Nguyen, Le. Nguyen, Lien and Hang Luong. Nguyen, Lien Thi. Nguyen, Linda Oan. Nguyen, Linh Thi. Nguyen, Linh Van. Nguyen, Lintt Danny. Nguyen, Lluu. Nguyen, Loc. Nguyen, Loi. Nguyen, Loi. Nguyen, Long Phi. Nguyen, Long T. Nguyen, Long Viet. Nguyen, Luom T. Nguyen, Mai Van. Nguyen, Man. Nguyen, Mao-Van. Nguyen, Mary. Nguyen, Mary. Nguyen, Melissa. Nguyen, Minh. Nguyen, Minh. Nguyen, Minh. Nguyen, Minh. Nguyen, Minh. Nguyen, Minh Ngoc. Nguyen, Minh Van. Nguyen, Moot. Nguyen, Mui Van. Nguyen, Mung T. Nguyen, Muoi. Nguyen, My Le Thi. Nguyen, My Tan. Nguyen, My V. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nancy. Nguyen, Nancy. Nguyen, Nghi. Nguyen, Nghi Q. Nguyen, Nghia. Nguyen, Nghiep. Nguyen, Ngoc Tim. Nguyen, Ngoc Van. Nguyen, Nguyet. Nguyen, Nhi. Nguyen, Nho Van. Nguyen, Nina. Nguyen, Nuong. Nguyen, Peter. Nguyen, Peter Thang. Nguyen, Peter V. Nguyen, Phe. Nguyen, Phong. Nguyen, Phong Ngoc. Nguyen, Phong T. Nguyen, Phong Xuan. Nguyen, Phu Huu. Nguyen, Phuc. Nguyen, Phuoc H.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Nguyen, Phuoc Van. Nguyen, Phuong. Nguyen, Phuong. Nguyen, Quang. Nguyen, Quang. Nguyen, Quang Dang. Nguyen, Quang Dinh. Nguyen, Quang Van. Nguyen, Quoc Van. Nguyen, Quyen Minh. Nguyen, Quyen T. Nguyen, Quyen-Van. Nguyen, Ran T. Nguyen, Randon. Nguyen, Richard. Nguyen, Richard Nghia. Nguyen, Rick Van. Nguyen, Ricky Tinh. Nguyen, Roe Van. Nguyen, Rose. Nguyen, Sam. Nguyen, Sandy Ha. Nguyen, Sang Van. Nguyen, Sau V. Nguyen, Si Ngoc. Nguyen, Son. Nguyen, Son Thanh. Nguyen, Son Van. Nguyen, Song V. Nguyen, Steve. Nguyen, Steve Q. Nguyen, Steven Giap. Nguyen, Sung. Nguyen, Tai. Nguyen, Tai The. Nguyen, Tai Thi. Nguyen, Tam. Nguyen, Tam Minh. Nguyen, Tam Thanh. Nguyen, Tam V. Nguyen, Tam Van. Nguyen, Tan. Nguyen, Ten Tan. Nguyen, Thach. Nguyen, Thang. Nguyen, Thanh. Nguyen, Thanh. Nguyen, Thanh. Nguyen, Thanh Phuc. Nguyen, Thanh V. Nguyen, Thanh Van. Nguyen, Thanh Van. Nguyen, Thanh Van. Nguyen, Thanh Van. Nguyen, Thao. Nguyen, Thi Bich Hang. Nguyen, Thiet. Nguyen, Thiet. Nguyen, Tho Duke. Nguyen, Thoa D. Nguyen, Thoa Thi. Nguyen, Thomas. Nguyen, Thu. Nguyen, Thu and Rose. Nguyen, Thu Duc. Nguyen, Thu Van. Nguyen, Thuan. Nguyen, Thuan. Nguyen, Thuong. Nguyen, Thuong Van. Nguyen, Thuy. Nguyen, Thuyen. Nguyen, Thuyen.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Nguyen, Tinh. Nguyen, Tinh Van. Nguyen, Toan. Nguyen, Toan Van. Nguyen, Tommy. Nguyen, Tony. Nguyen, Tony. Nguyen, Tony. Nguyen, Tony D. Nguyen, Tony Hong. Nguyen, Tony Si. Nguyen, Tra. Nguyen, Tra. Nguyen, Tracy T. Nguyen, Tri D. Nguyen, Trich Van. Nguyen, Trung Van. Nguyen, Tu Van. Nguyen, Tuan. Nguyen, Tuan A. Nguyen, Tuan H. Nguyen, Tuan Ngoc. Nguyen, Tuan Q. Nguyen, Tuan Van. Nguyen, Tung. Nguyen, Tuyen Duc. Nguyen, Tuyen Van. Nguyen, Ty and Ngoc Ngo. Nguyen, Van H. Nguyen, Van Loi. Nguyen, Vang Van. Nguyen, Viet. Nguyen, Viet. Nguyen, Viet V. Nguyen, Viet Van. Nguyen, Vinh Van. Nguyen, Vinh Van. Nguyen, Vinh Van. Nguyen, VT. Nguyen, Vu Minh. Nguyen, Vu T. Nguyen, Vu Xuan. Nguyen, Vui. Nguyen, Vuong V. Nguyen, Xuong Kim. Nhan, Tran Quoc. Nhon, Seri. Nichols, Steve Anna. Nicholson, Gary. Nixon, Leonard. Noble, Earl. Noland, Terrel W. Normand, Timothy. Norris, Candace P. Norris, John A. Norris, Kenneth L. Norris, Kevin J. Nowell, James E. Noy, Phen. Nunez, Conrad. Nunez, Jody. Nunez, Joseph Paul. Nunez, Randy. Nunez, Wade Joseph. Nyuyen, Toan. Oberling, Darryl. O'Blance, Adam. O'Brien, Gary S. O'Brien, Mark. O'Brien, Michele. Ogden, John M. Oglesby, Henry. Oglesby, Phyllis.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			O'Gwynn, Michael P Sr. Ohmer, Eva G. Ohmer, George J. Olander, Hazel. Olander, Rodney. Olander, Roland J. Olander, Russell J. Olander, Thomas. Olano, Kevin. Olano, Owen J. Olano, Shelby F. Olds, Malcolm D Jr. Olinde, Wilfred J Jr. Oliver, Charles. O'Neil, Carey. Oracoy, Brad R. Orage, Eugene. Orlando, Het. Oteri, Robert F. Oubre, Faron P. Oubre, Thomas W. Ourks, SokHoms K. Owens, Larry E. Owens, Sheppard. Owens, Timothy. Pacaccio, Thomas Jr. Padgett, Kenneth J. Palmer, Gay Ann P. Palmer, John W. Palmer, Mack. Palmisano, Daniel P. Palmisano, Dwayne Jr. Palmisano, Kim. Palmisano, Larry J. Palmisano, Leroy J. Palmisano, Robin G. Pam, Phuong Bui. Parfait, Antoine C Jr. Parfait, Jerry Jr. Parfait, John C. Parfait, Joshua K. Parfait, Mary F. Parfait, Mary S. Parfait, Olden G Jr. Parfait, Robert C Jr. Parfait, Robert C Sr. Parfait, Rodney. Parfait, Shane A. Parfait, Shelton J. Parfait, Timmy J. Parker, Clyde A. Parker, Franklin L. Parker, Paul A. Parker, Percy Todd. Parks, Daniel Duane. Parks, Ellery Doyle Jr. Parrett, Joseph D Jr. Parria, Danny. Parria, Gavin C Sr. Parria, Gillis F Jr. Parria, Gillis F Sr. Parria, Jerry D. Parria, Kip G. Parria, Lionel J Sr. Parria, Louis III. Parria, Louis J Sr. Parria, Louis Jr. Parria, Michael. Parria, Ronald. Parria, Ross. Parris, Troy M. Parrish, Charles. Parrish, Walter L.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Passmore, Penny. Pate, Shane. Paterbaugh, Richard. Patingo, Roger D. Paul, Robert Emmett. Payne, John Francis. Payne, Stuart. Peatross, David A. Pelas, James Curtis. Pelas, Jeffery. Pellegrin, Corey P. Pellegrin, Curlynn. Pellegrin, James A Jr. Pellegrin, Jordey. Pellegrin, Karl. Pellegrin, Karl J. Pellegrin, Randy. Pellegrin, Randy Sr. Pellegrin, Rodney J Sr. Pellegrin, Samuel. Pellegrin, Troy Sr. Peltier, Clyde. Peltier, Rodney J. Pena, Bartolo Jr. Pena, Israel. Pendarvis, Gracie. Pennison, Elaine. Pennison, Milton G. Pequeno, Julius. Percle, David P. Perez, Allen M. Perez, David J. Perez, David P. Perez, Derek. Perez, Edward Jr. Perez, Henry Jr. Perez, Joe B. Perez, Tilden A Jr. Perez, Warren A Jr. Perez, Warren A Sr. Perez, Wesley. Perrin, Dale. Perrin, David M. Perrin, Edward G Sr. Perrin, Errol Joseph Jr. Perrin, Jerry J. Perrin, Kenneth V. Perrin, Kevin. Perrin, Kline J Sr. Perrin, Kurt M. Perrin, Michael. Perrin, Michael A. Perrin, Murphy P. Perrin, Nelson C Jr. Perrin, Pershing J Jr. Perrin, Robert. Perrin, Tim J. Perrin, Tony. Persohn, William T. Peshoff, Kirk Lynn. Pete, Alfred F Jr. Pete, Alfred F Sr. Pfleeger, William A. Pham, An V. Pham, Anh My. Pham, Bob. Pham, Cho. Pham, Cindy. Pham, David. Pham, Dung. Pham, Dung Phuoc. Pham, Dung Phuoc. Pham, Duong Van.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Pham, Gai. Pham, Hai. Pham, Hai Hong. Pham, Hien. Pham, Hien C. Pham, Hiep. Pham, Hieu. Pham, Huan Van. Pham, Hung. Pham, Hung V. Pham, Hung V. Pham, Huynh. Pham, John. Pham, Johnny. Pham, Joseph S. Pham, Kannin. Pham, Nga T. Pham, Nhung T. Pham, Osmond. Pham, Paul P. Pham, Phong-Thanh. Pham, Phung. Pham, Quoc V. Pham, Steve Ban. Pham, Steve V. Pham, Thai Van. Pham, Thai Van. Pham, Thanh. Pham, Thanh. Pham, Thanh V. Pham, Thinh. Pham, Thinh V. Pham, Tommy V. Pham, Tran and Thu Quang. Pham, Ut Van. Phan, Anh Thi. Phan, Banh Van. Phan, Cong Van. Phan, Dan T. Phan, Hoang. Phan, Hung Thanh. Phan, Johnny. Phan, Lam. Phan, Luyen Van. Phan, Nam V. Phan, Thong. Phan, Tien V. Phan, Toan. Phan, Tu Van. Phat, Lam Mau. Phelps, John D. Phillips, Bruce A. Phillips, Danny D. Phillips, Gary. Phillips, Harry Louis. Phillips, James C Jr. Phillips, Kristrina W. Phipps, AW. Phonthaasa, Khaolop. Phorn, Phen. Pickett, Kathy. Picou, Calvin Jr. Picou, Gary M. Picou, Jennifer. Picou, Jerome J. Picou, Jordan J. Picou, Randy John. Picou, Ricky Sr. Picou, Terry. Pierce, Aaron. Pierce, Dean. Pierce, Elwood. Pierce, Imogene.

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			Pierce, Stanley. Pierce, Taffie Boone. Pierre, Ivy. Pierre, Joseph. Pierre, Joseph C Jr. Pierre, Paul J. Pierre, Ronald J. Pierron, Jake. Pierron, Patsy H. Pierron, Roger D. Pinell, Ernie A. Pinell, Harry J Jr. Pinell, Jody J. Pinell, Randall James. Pinnell, Richard J. Pinnell, Robert. Pitre, Benton J. Pitre, Carol. Pitre, Claude A Sr. Pitre, Elrod. Pitre, Emily B. Pitre, Glenn P. Pitre, Herbert. Pitre, Jeannie. Pitre, Leo P. Pitre, Robert Jr. Pitre, Robin. Pitre, Ryan P. Pitre, Ted J. Pittman, Roger. Pizani, Bonnie. Pizani, Craig. Pizani, Jane. Pizani, Terrill J. Pizani, Terry M. Pizani, Terry M Jr. Plaisance, Arthur E. Plaisance, Burgess. Plaisance, Darren. Plaisance, Dean J Sr. Plaisance, Dorothy B. Plaisance, Dwayne. Plaisance, Earl J Jr. Plaisance, Errance H. Plaisance, Evans P. Plaisance, Eves A III. Plaisance, Gideons. Plaisance, Gillis S. Plaisance, Henry A Jr. Plaisance, Jacob. Plaisance, Jimmie J. Plaisance, Joyce. Plaisance, Keith. Plaisance, Ken G. Plaisance, Lawrence J. Plaisance, Lucien Jr. Plaisance, Peter A Sr. Plaisance, Peter Jr. Plaisance, Richard J. Plaisance, Russel P. Plaisance, Russell P Sr. Plaisance, Thomas. Plaisance, Thomas J. Plaisance, Wayne P. Plaisance, Whitney III. Plork, Phan. Poche, Glenn J Jr. Poche, Glenn J Sr. Pockrus, Gerald. Poiencot, Russell Jr. Poillion, Charles A. Polito, Gerald. Polkey, Gary J.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Polkey, Richard R Jr. Polkey, Ronald. Polkey, Shawn Michael. Pollet, Lionel J Sr. Pomgoria, Mario. Ponce, Ben. Ponce, Lewis B. Poon, Raymond. Pope, Robert. Popham, Winford A. Poppell, David M. Porche, Ricky J. Portier, Bobby. Portier, Chad. Portier, Corinne L. Portier, Penelope J. Portier, Robbie. Portier, Russel A Sr. Portier, Russell. Potter, Hubert Edward Jr. Potter, Robert D. Potter, Robert J. Pounds, Terry Wayne. Powers, Clyde T. Prejean, Dennis J. Price, Carl. Price, Curtis. Price, Edwin J. Price, Franklin J. Price, George J Sr. Price, Norris J Sr. Price, Steve J Jr. Price, Timmy T. Price, Wade J. Price, Warren J. Prihoda, Steve. Primeaux, Scott. Pritchard, Dixie J. Pritchard, James Ross Jr. Prosperie, Claude J Jr. Prosperie, Myron. Prout, Rollen. Prout, Sharonski K. Prum, Thou. Pugh, Charles D Jr. Pugh, Charles Sr. Pugh, Cody. Pugh, Deanna. Pugh, Donald. Pugh, Nickolas. Punch, Alvin Jr. Punch, Donald J. Punch, Todd M. Punch, Travis J. Purata, Maria. Purse, Emil. Purvis, George. Quach, Duc. Quach, James D. Quach, Joe. Quach, Si Tan. Quinn, Dora M. Racca, Charles. Racine, Sylvan P Jr. Radulic, Igor. Ragas, Albert G. Ragas, Gene. Ragas, John D. Ragas, Jonathan. Ragas, Richard A. Ragas, Ronda S. Ralph, Lester B. Ramirez, Alfred J Jr.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Randazzo, John A Jr. Randazzo, Rick A. Rando, Stanley D. Ranko, Ellis Gerald. Rapp, Dwayne. Rapp, Leroy and Sedonia. Rawlings, John H Sr. Rawlings, Ralph E. Rawls, Norman E. Ray, Leo. Ray, William C Jr. Raynor, Steven Earl. Readenour, Kelty O. Reagan, Roy. Reason, Patrick W. Reaux, Paul S Sr. Reaves, Craig A. Reaves, Laten. Rebert, Paul J Sr. Rebert, Steve M Jr. Rebstock, Charles. Recter, Lance Jr. Rector, Warren L. Redden, Yvonne. Regnier, Leoncea B. Remondet, Garland Jr. Renard, Lanny. Reno, Edward. Reno, George C. Reno, George H. Reno, George T. Reno, Harry. Revell, Ben David. Reyes, Carlton. Reyes, Dwight D Sr. Reynon, Marcello Jr. Rhodes, Randolph N. Rhoto, Christopher L. Ribardi, Frank A. Rich, Wanda Heafner. Richard, Bruce J. Richard, David L. Richard, Edgar J. Richard, James Ray. Richard, Melissa. Richard, Randall K. Richardson, James T. Richert, Daniel E. Richo, Earl Sr. Richoux, Dudley Donald Jr. Richoux, Irvin J Jr. Richoux, Judy. Richoux, Larry. Richoux, Mary A. Riego, Raymond A. Riffle, Josiah B. Rigaud, Randall Ryan. Riggs, Jeffrey B. Riley, Jackie Sr. Riley, Raymond. Rinkus, Anthony J III. Rios, Amado. Ripp, Norris M. Robbins, Tony. Robert, Dan S. Roberts, Michael A. Robertson, Kevin. Robeson, Richard S Jr. Robichaux, Craig J. Robin, Alvin G. Robin, Cary Joseph. Robin, Charles R III. Robin, Danny J.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Robin, Donald. Robin, Floyd A. Robin, Kenneth J Sr. Robin, Ricky R. Robinson, Johnson P III. Robinson, Walter. Roccaforte, Clay. Rodi, Dominick R. Rodi, Rhonda. Rodrigue, Brent J. Rodrigue, Carrol Sr. Rodrigue, Glenn. Rodrigue, Lerlene. Rodrigue, Reggie Sr. Rodrigue, Sonya. Rodrigue, Wayne. Rodriguez, Barry. Rodriguez, Charles V Sr. Rodriguez, Gregory. Rodriguez, Jesus. Rodriguez, Joseph C Jr. Roeum, Orn. Rogers, Barry David. Rogers, Chad. Rogers, Chad M. Rogers, Kevin J. Rogers, Nathan J. Rojas, Carlton J Sr. Rojas, Curtis Sr. Rojas, Dennis J Jr. Rojas, Dennis J Sr. Rojas, Gordon V. Rojas, Kerry D. Rojas, Kerry D Jr. Rojas, Randy J Sr. Rojas, Raymond J Jr. Roland, Brad. Roland, Mathias C. Roland, Vincent. Rollins, Theresa. Rollo, Wayne A. Rome, Victor J IV. Romero, D H. Romero, Kardel J. Romero, Norman. Romero, Philip J. Ronquille, Glenn. Ronquille, Norman C. Ronquillo, Earl. Ronquillo, Richard J. Ronquillo, Timothy. Roseburrough, Charles R Jr. Ross, Dorothy. Ross, Edward Danny Jr. Ross, Leo L. Ross, Robert A. Roth, Joseph F Jr. Roth, Joseph M Jr. Rotolo, Carolyn. Rotolo, Feliz. Rouse, Jimmy. Roussel, Michael D Jr. Roy, Henry Lee Jr. Rudolph, Chad A. Ruiz, Donald W. Ruiz, James L. Ruiz, Paul E. Ruiz, Paul R. Russell, Bentley R. Russell, Casey. Russell, Daniel. Russell, James III. Russell, Julie Ann.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Russell, Michael J. Russell, Nicholas M. Russell, Paul. Rustick, Kenneth. Ruttley, Adrian K. Ruttley, Ernest T Jr. Ruttley, JT. Ryan, James C Sr. Rybiski, Rhebb R. Ryder, Luther V. Sadler, Stewart. Sagnes, Everett. Saha, Amanda K. Saling, Don M. Saltalamacchia, Preston J. Saltalamacchia, Sue A. Salvato, Lawrence Jr. Samanie, Caroll J. Samanie, Frank J. Samsome, Don. Sanamo, Troy P. Sanchez, Augustine. Sanchez, Jeffery A. Sanchez, Juan. Sanchez, Robert A. Sanders, William Shannon. Sandras, R J. Sandras, R J Jr. Sandrock, Roy R III. Santini, Lindberg W Jr. Santiny, James. Santiny, Patrick. Sapia, Carroll J Jr. Sapia, Eddie J Jr. Sapia, Willard. Saturday, Michael Rance. Sauce, Carlton Joseph. Sauce, Joseph C Jr. Saucier, Houston J. Sauls, Russell. Savage, Malcolm H. Savant, Raymond. Savoie, Allen. Savoie, Brent T. Savoie, James. Savoie, Merlin F Jr. Savoie, Reginald M II. Sawyer, Gerald. Sawyer, Rodney. Scarabin, Clifford. Scarabin, Michael J. Schaffer, Kelly. Schaubhut, Curry A. Schellinger, Lester B Jr. Schexnaydre, Michael. Schirmer, Robert Jr. Schjott, Joseph J Sr. Schlindwein, Henry. Schmit, Paul A Jr. Schmit, Paul A Sr. Schmit, Victor J Jr. Schouest, Ellis J III. Schouest, Ellis Jr. Schouest, Juston. Schouest, Mark. Schouest, Noel. Schrimpf, Robert H Jr. Schultz, Troy A. Schwartz, Sidney. Scott, Aaron J. Scott, Audie B. Scott, James E III. Scott, Milford P.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Scott, Paul. Seabrook, Terry G. Seal, Charles T. Seal, Joseph G. Seaman, Garry. Seaman, Greg. Seaman, Ollie L Jr. Seaman, Ollie L Sr. Seang, Meng. Sehon, Robert Craig. Sekul, Morris G. Sekul, S George. Sellers, Isaac Charles. Seng, Sophan. Serigne, Adam R. Serigne, Elizabeth. Serigne, James J III. Serigne, Kimmie J. Serigne, Lisa M. Serigne, Neil. Serigne, O'Neil N. Serigne, Richard J Sr. Serigne, Rickey N. Serigne, Ronald Raymond. Serigne, Ronald Roch. Serigne, Ross. Serigny, Gail. Serigny, Wayne A. Serpas, Lenny Jr. Sessions, William O III. Sessions, William O Jr. Sevel, Michael D. Sevin, Carl Anthony. Sevin, Earline. Sevin, Janell A. Sevin, Joey. Sevin, Nac J. Sevin, O'Neil and Symantha. Sevin, Phillip T. Sevin, Shane. Sevin, Shane Anthony. Sevin, Stanley J. Sevin, Willis. Seymour, Janet A. Shackelford, David M. Shaffer, Curtis E. Shaffer, Glynnon D. Shay, Daniel A. Shilling, Jason. Shilling, L E. Shugars, Robert L. Shutt, Randy. Sifuentes, Esteban. Sifuentes, Fernando. Silver, Curtis A Jr. Simon, Curnis. Simon, John. Simon, Leo. Simpson, Mark. Sims, Donald L. Sims, Mike. Singley, Charlie Sr. Singley, Glenn. Singley, Robert Joseph. Sirgo, Jace. Sisung, Walter. Sisung, Walter Jr. Skinner, Gary M Sr. Skinner, Richard. Skipper, Malcolm W. Skrmetta, Martin J. Smelker, Brian H. Smith, Brian.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Smith, Carl R Jr. Smith, Clark W. Smith, Danny. Smith, Danny M Jr. Smith, Donna. Smith, Elmer T Jr. Smith, Glenda F. Smith, James E. Smith, Margie T. Smith, Mark A. Smith, Nancy F. Smith, Raymond C Sr. Smith, Tim. Smith, Walter M Jr. Smith, William T. Smithwick, Ted Wayne. Smoak, Bill. Smoak, William W III. Snell, Erick. Snodgrass, Sam. Soeung, Phat. Soileau, John C Sr. Sok, Kheng. Sok, Montha. Sok, Nhip. Solet, Darren. Solet, Donald M. Solet, Joseph R. Solet, Raymond J. Solorzano, Marilyn. Son, Kim. Son, Sam Nang. Son, Samay. Son, Thuong Cong. Soprano, Daniel. Sork, William. Sou, Mang. Soudelier, Louis Jr. Soudelier, Shannon. Sour, Yem Kim. Southerland, Robert. Speir, Barbara Kay. Spell, Jeffrey B. Spell, Mark A. Spellmeyer, Joel F Sr. Spencer, Casey. Spiers, Donald A. Sprinkle, Avery M. Sprinkle, Emery Shelton Jr. Sprinkle, Joseph Warren. Squarsich, Kenneth J. Sreiy, Siphan. St Amant, Dana A. St Ann, Mr and Mrs Jerome K. St Pierre, Darren. St Pierre, Scott A. Staves, Patrick. Stechmann, Chad. Stechmann, Karl J. Stechmann, Todd. Steele, Arnold D Jr. Steele, Henry H III. Steen, Carl L. Steen, James D. Steen, Kathy G. Stein, Norris J Jr. Stelly, Adlar. Stelly, Carl A. Stelly, Chad P. Stelly, Delores. Stelly, Sandrus J Sr. Stelly, Sandrus Jr. Stelly, Toby J.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Stelly, Veronica G. Stelly, Warren. Stephenson, Louis. Stevens, Alvin. Stevens, Curtis D. Stevens, Donald. Stevens, Glenda. Stewart, Chester Jr. Stewart, Derald. Stewart, Derek. Stewart, Fred. Stewart, Jason F. Stewart, Ronald G. Stewart, William C. Stiffler, Thanh. Stipelcovich, Lawrence L. Stipelcovich, Todd J. Stockfett, Brenda. Stokes, Todd. Stone-Rinkus, Pamela. Strader, Steven R. Strickland, Kenneth. Strickland, Rita G. Stuart, James Vernon. Stutes, Rex E. Sulak, Billy W. Sun, Hong Sreng. Surmik, Donald D. Swindell, Keith M. Sylve, Dennis A. Sylve, James L. Sylve, Nathan. Sylve, Scott. Sylvesr, Paul A. Ta, Ba Van. Ta, Chris. Tabb, Calvin. Taliancich, Andrew. Taliancich, Ivan. Taliancich, Joseph M. Taliancich, Srecka. Tan, Ho Dung. Tan, Hung. Tan, Lan T. Tan, Ngo The. Tang, Thanh. Tanner, Robert Charles. Taravella, Raymond. Tassin, Alton J. Tassin, Keith P. Tate, Archie P. Tate, Terrell. Tauzier, Kevin M. Taylor, Doyle L. Taylor, Herman R. Taylor, Herman R Jr. Taylor, J P Jr. Taylor, John C. Taylor, Leander J Sr. Taylor, Leo Jr. Taylor, Lewis. Taylor, Nathan L. Taylor, Robert L. Taylor, Robert M. Teap, Phal. Tek, Heng. Templat, Paul. Terluin, John L III. Terrebonne, Adrein Scott. Terrebonne, Alphonse J. Terrebonne, Alton S Jr. Terrebonne, Alton S Sr. Terrebonne, Carol.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Terrebonne, Carroll. Terrebonne, Chad. Terrebonne, Chad Sr. Terrebonne, Daniel J. Terrebonne, Donavon J. Terrebonne, Gary J Sr. Terrebonne, Jimmy Jr. Terrebonne, Jimmy Sr. Terrebonne, Kline A. Terrebonne, Lanny. Terrebonne, Larry F Jr. Terrebonne, Scott. Terrebonne, Steven. Terrebonne, Steven. Terrebonne, Toby J. Terrel, Chad J Sr. Terrell, C Todd. Terrio, Brandon James. Terrio, Harvey J Jr. Terry, Eloise P. Tesvich, Kuzma D. Thac, Dang Van. Thach, Phuong. Thai, Huynh Tan. Thai, Paul. Thai, Thomas. Thanh, Thien. Tharpe, Jack. Theriot, Anthony. Theriot, Carroll A Jr. Theriot, Clay J Jr. Theriot, Craig A. Theriot, Dean P. Theriot, Donnie. Theriot, Jeffery C. Theriot, Larry J. Theriot, Lynn. Theriot, Mark A. Theriot, Roland P Jr. Theriot, Wanda J. Thibodaux, Jared. Thibodeaux, Bart James. Thibodeaux, Brian A. Thibodeaux, Brian M. Thibodeaux, Calvin A Jr. Thibodeaux, Fay F. Thibodeaux, Glenn P. Thibodeaux, Jeffrey. Thibodeaux, Jonathan. Thibodeaux, Josephine. Thibodeaux, Keith. Thibodeaux, Tony J. Thibodeaux, Warren J. Thidobaux, James V Sr. Thiet, Tran. Thomas, Alvin. Thomas, Brent. Thomas, Dally S. Thomas, Janie G. Thomas, John Richard. Thomas, Kenneth Ward. Thomas, Monica P. Thomas, Ralph L Jr. Thomas, Ralph Lee Jr. Thomas, Randall. Thomas, Robert W. Thomas, Willard N Jr. Thomassie, Gerard. Thomassie, Nathan A. Thomassie, Philip A. Thomassie, Ronald J. Thomassie, Tracy Joseph. Thompson, Bobbie.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Thompson, David W. Thompson, Edwin A. Thompson, George. Thompson, James D Jr. Thompson, James Jr. Thompson, John E. Thompson, John R. Thompson, Randall. Thompson, Sammy. Thompson, Shawn. Thong, R. Thonn, John J Jr. Thonn, Victor J. Thorpe, Robert Lee Jr. Thurman, Charles E. Tiet, Thanh Duc. Tilghman, Gene E. Tillett, Billy Carl. Tillman, Lewis A Jr. Tillman, Timothy P and Yvonne M. Tillotson, Pat. Tinney, Mark A. Tisdale, Georgia W. Tiser, Oscar. Tiser, Thomas C Jr. Tiser, Thomas C Sr. To, Cang Van. To, Du Van. Todd, Fred Noel. Todd, Patricia J. Todd, Rebecca G. Todd, Robert C and Patricia J. Todd, Vonnie Frank Jr. Tompkins, Gerald Paul II. Toney, George Jr. Tong, Hai V. Tony, Linh C. Toomer, Christina Abbott. Toomer, Christy. Toomer, Frank G Jr. Toomer, Jeffrey E. Toomer, Kenneth. Toomer, Lamar K. Toomer, Larry Curtis and Tina. Toomer, William Kemp. Torrible, David P. Torrible, Jason. Touchard, Anthony H. Touchard, John B Jr. Touchard, Paul V Jr. Touchet, Eldridge III. Touchet, Eldridge Jr. Toups, Anthony G. Toups, Bryan. Toups, Jeff. Toups, Jimmie J. Toups, Kim. Toups, Manuel. Toups, Ted. Toups, Tommy. Toureau, James. Tower, H Melvin. Townsend, Harmon Lynn. Townsend, Marion Brooks. Tra, Hop T. Trabeau, James D. Trahan, Allen A Jr. Trahan, Alvin Jr. Trahan, Druby. Trahan, Dudley. Trahan, Elie J. Trahan, Eric J. Trahan, James.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Trahan, Karen C. Trahan, Lynn P Sr. Trahan, Ricky. Trahan, Ronald J. Trahan, Tracey L. Trahan, Wayne Paul. Tran, Allen Hai. Tran, Andana. Tran, Anh. Tran, Anh. Tran, Anh N. Tran, Bay V. Tran, Bay Van. Tran, Binh. Tran, Binh Van. Tran, Ca Van. Tran, Cam Van. Tran, Chau V. Tran, Chau Van. Tran, Chau Van. Tran, Chi T. Tran, Christina Phuong. Tran, Chu V. Tran, Cuong. Tran, Cuong. Tran, Danny Duc. Tran, Den. Tran, Dien. Tran, Dinh M. Tran, Dinh Q. Tran, Doan. Tran, Dung Van. Tran, Duoc. Tran, Duoc. Tran, Duong. Tran, Eric. Tran, Francis. Tran, Francis. Tran, Giang. Tran, Giao. Tran, Ha Mike. Tran, Hai. Tran, Hien H. Tran, Hiep Phuoc. Tran, Hieu. Tran, Hoa. Tran, Hoa. Tran, Hue T. Tran, Huey. Tran, Hung. Tran, Hung. Tran, Hung. Tran, Hung P. Tran, Hung Van. Tran, Hung Van. Tran, Hung Viet. Tran, James N. Tran, John. Tran, Johnny Dinh. Tran, Joseph. Tran, Joseph T. Tran, Khan Van. Tran, Khanh. Tran, Kim. Tran, Kim Chi Thi. Tran, Lan Tina. Tran, Le and Phat Le. Tran, Leo Van. Tran, Loan. Tran, Long. Tran, Long Van. Tran, Luu Van. Tran, Ly.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Tran, Ly Van. Tran, Mai Thi. Tran, Mary. Tran, Miel Van. Tran, Mien. Tran, Mike. Tran, Mike Dai. Tran, Minh Huu. Tran, Muoi. Tran, My T. Tran, Nam Van. Tran, Nang Van. Tran, Nghia and T Le Banh. Tran, Ngoc. Tran, Nhanh Van. Tran, Nhieu T. Tran, Nhieu Van. Tran, Nho. Tran, Peter. Tran, Phu Van. Tran, Phuc D. Tran, Phuc V. Tran, Phung. Tran, Quan Van. Tran, Quang Quang. Tran, Quang T. Tran, Quang Van. Tran, Qui V. Tran, Quy Van. Tran, Ran Van. Tran, Sarah T. Tran, Sau. Tran, Scotty. Tran, Son. Tran, Son Van. Tran, Steven Tuan. Tran, Tam. Tran, Te Van. Tran, Than. Tran, Thang Van. Tran, Thanh. Tran, Thanh. Tran, Thanh Van. Tran, Theresa. Tran, Thi. Tran, Thich Van. Tran, Thien. Tran, Thien Van. Tran, Thiet. Tran, Tommy. Tran, Tony. Tran, Tri. Tran, Trinh. Tran, Trung. Tran, Trung Van. Tran, Tu. Tran, Tuan. Tran, Tuan. Tran, Tuan Minh. Tran, Tuong Van. Tran, Tuyet Thi. Tran, Van T. Tran, Victor. Tran, Vinh. Tran, Vinh Q. Tran, Vinh Q. Tran, Vui Kim. Trang, Tan. Trapp, Tommy. Treadaway, Michael. Tregle, Curtis. Trehoan, William Paul. Treuil, Gary J.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Trevino, Manuel. Treybig, E H ''Buddy'' Jr. Triche, Donald G. Trieu, Hiep and Jackie. Trieu, Hung Hoa. Trieu, Jasmine and Ly. Trieu, Lorie and Tam. Trieu, Tam. Trinh, Christopher B. Trinh, Philip P. Trosclair, Clark K. Trosclair, Clark P. Trosclair, Eugene P. Trosclair, James J. Trosclair, Jerome. Trosclair, Joseph. Trosclair, Lori. Trosclair, Louis V. Trosclair, Patricia. Trosclair, Randy. Trosclair, Ricky. Trosclair, Wallace Sr. Truong, Andre. Truong, Andre V. Truong, Be Van. Truong, Benjamin. Truong, Dac. Truong, Huan. Truong, Kim. Truong, Nhut Van. Truong, Steve. Truong, Tham T. Truong, Thanh Minh. Truong, Them Van. Truong, Thom. Truong, Timmy. Trutt, George W Sr. Trutt, Wanda. Turlich, Mervin A. Turner, Calvin L. Tyre, John. Upton, Terry R. Valentino, J G Jr. Valentino, James. Vallot, Christopher A. Vallot, Nancy H. Valure, Hugh P. Van Alsburg, Charles. Van Gordstnoven, Jean J. Van Nguyen, Irving. Van, Than. Van, Vui. Vanacor, Kathy D. Vanacor, Malcolm J Sr. Vanicor, Bobbie. VanMeter, Matthew T. VanMeter, William Earl. Varney, Randy L. Vath, Raymond S. Veasel, William E III. Vegas, Brien J. Vegas, Percy J. Vegas, Terry J. Vegas, Terry J Jr. Vegas, Terry Jr. Vela, Peter. Verdin, Aaron. Verdin, Av. Verdin, Bradley J. Verdin, Brent A. Verdin, Charles A. Verdin, Charles E. Verdin, Coy P.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Verdin, Curtis A Jr. Verdin, Delphine. Verdin, Diana A. Verdin, Ebro W. Verdin, Eric P. Verdin, Ernest Joseph Sr. Verdin, Jeff C. Verdin, Jeffrey A. Verdin, Jessie J. Verdin, John P. Verdin, Joseph. Verdin, Joseph A Jr. Verdin, Joseph Cleveland. Verdin, Joseph D Jr. Verdin, Joseph S. Verdin, Joseph W Jr. Verdin, Justilien G. Verdin, Matthew W Sr. Verdin, Michel A. Verdin, Paul E. Verdin, Perry Anthony. Verdin, Rodney. Verdin, Rodney P. Verdin, Rodney P. Verdin, Skylar. Verdin, Timmy J. Verdin, Toby. Verdin, Tommy P. Verdin, Tony J. Verdin, Troy. Verdin, Vincent. Verdin, Viness Jr. Verdin, Wallace P. Verdin, Webb A Sr. Verdin, Wesley D Sr. Verdine, Jimmy R. Vermeulen, Joseph Thomas. Verret, Darren L. Verret, Donald J. Verret, Ernest J Sr. Verret, James A. Verret, Jean E. Verret, Jimmy J Sr. Verret, Johnny R. Verret, Joseph L. Verret, Paul L. Verret, Preston. Verret, Quincy. Verret, Ronald Paul Sr. Versaggi, Joseph A. Versaggi, Salvatore J. Vicknair, Brent J Sr. Vicknair, Duane P. Vicknair, Henry Dale. Vicknair, Ricky A. Vidrine, Bill and Kathi. Vidrine, Corey. Vidrine, Richard. Vila, William F. Villers, Joseph A. Vincent, Gage Tyler. Vincent, Gene. Vincent, Gene B. Vincent, Robert N. Vise, Charles E III. Vizier, Barry A. Vizier, Christopher. Vizier, Clovis J III. Vizier, Douglas M. Vizier, Tommie Jr. Vo, Anh M. Vo, Chin Van. Vo, Dam.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Vo, Dan M. Vo, Dany. Vo, Day V. Vo, Duong V. Vo, Dustin. Vo, Hai Van. Vo, Hanh Xuan. Vo, Hien Van. Vo, Hoang The. Vo, Hong. Vo, Hung Thanh. Vo, Huy K. Vo, Johnny. Vo, Kent. Vo, Lien Van. Vo, Man. Vo, Mark Van. Vo, Minh Hung. Vo, Minh Ngoc. Vo, Minh Ray. Vo, Mong V. Vo, My Dung Thi. Vo, My Lynn. Vo, Nga. Vo, Nhon Tai. Vo, Nhu Thanh. Vo, Quang Minh. Vo, Sang M. Vo, Sanh M. Vo, Song V. Vo, Tan Thanh. Vo, Tan Thanh. Vo, Thanh Van. Vo, Thao. Vo, Thuan Van. Vo, Tien Van. Vo, Tom. Vo, Tong Ba. Vo, Trao Van. Vo, Truong. Vo, Van Van. Vo, Vi Viet. Vodopija, Benjamin S. Vogt, James L. Voisin, Eddie James. Voisin, Joyce. Voison, Jamie. Von Harten, Harold L. Vona, Michael A. Vongrith, Richard. Vossler, Kirk. Vu, Hung. Vu, John H. Vu, Khanh. Vu, Khoi Van. Vu, Quan Quoc. Vu, Ruyen Viet. Vu, Sac. Vu, Sean. Vu, Tam. Vu, Thiem Ngoc. Vu, Thuy. Vu, Tom. Vu, Tu Viet. Vu, Tuyen Jack. Vu, Tuyen Viet. Wade, Calvin J Jr. Wade, Gerard. Waguespack, David M Sr. Waguespack, Randy P II. Wainwright, Vernon. Walker, Jerry. Walker, Rogers H.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Wallace, Dennis. Wallace, Edward. Wallace, John A. Wallace, John K. Wallace, Trevis L. Waller, Jack Jr. Waller, John M. Waller, Mike. Wallis, Craig A. Wallis, Keith. Walters, Samuel G. Walton, Marion M. Wannage, Edward Joseph. Wannage, Fred Jr. Wannage, Frederick W Sr. Ward, Clarence Jr. Ward, Olan B. Ward, Walter M. Washington, Clifford. Washington, John Emile III. Washington, Kevin. Washington, Louis N. Wattigney, Cecil K Jr. Wattigney, Michael. Watts, Brandon A. Watts, Warren. Webb, Bobby. Webb, Bobby N. Webb, Josie M. Webre, Donald. Webre, Dudley A. Webster, Harold. Weeks, Don Franklin. Weems, Laddie E. Weinstein, Barry C. Weiskopf, Rodney. Weiskopf, Rodney Sr. Weiskopf, Todd. Welch, Amos J. Wells, Douglas E. Wells, Stephen Ray. Wendling, Steven W. Wescovich, Charles W. Wescovich, Wesley Darryl. Whatley, William J. White, Allen Sr. White, Charles. White, Charles Fulton. White, David L. White, Gary Farrell. White, James Hugh. White, Perry J. White, Raymond. White, Robert Sr. Wicher, John. Wiggins, Chad M Sr. Wiggins, Ernest. Wiggins, Harry L. Wiggins, Kenneth A. Wiggins, Matthew. Wilbur, Gerald Anthony. Wilcox, Robert. Wiles, Alfred Adam. Wiles, Glen Gilbert. Wiles, Sonny Joel Sr. Wilkerson, Gene Dillard and Judith. Wilkinson, William Riley. Williams, Allen Jr. Williams, Andrew. Williams, B Dean. Williams, Clyde L. Williams, Dale A. Williams, Emmett J.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Williams, Herman J Jr. Williams, J T. Williams, John A. Williams, Johnny Paul. Williams, Joseph H. Williams, Kirk. Williams, Leopold A. Williams, Mark A. Williams, Mary Ann C. Williams, Melissa A. Williams, Nina. Williams, Oliver Kent. Williams, Parish. Williams, Roberto. Williams, Ronnie. Williams, Scott A. Williams, Steven. Williams, Thomas D. Williamson, Richard L Sr. Willyard, Derek C. Willyard, Donald R. Wilson, Alward. Wilson, Hosea. Wilson, Joe R. Wilson, Jonathan. Wilson, Katherine. Wiltz, Allen. Wing, Melvin. Wiseman, Allen. Wiseman, Clarence J Jr. Wiseman, Jean P. Wiseman, Joseph A. Wiseman, Michael T Jr. Wiseman, Michael T Sr. Wolfe, Charles. Woods, John T III. Wright, Curtis. Wright, Leonard. Wright, Randy D. Yeamans, Douglas. Yeamans, Neil. Yeamans, Ronnie. Yoeuth, Peon. Yopp, Harold. Yopp, Jonathon. Yopp, Milton Thomas. Young, James. Young, Taing. Young, Willie. Yow, Patricia D. Yow, Richard C. Zanca, Anthony V Sr. Zar, Ashley A. Zar, Carl J. Zar, John III. Zar, Steve. Zar, Steven. Zar, Troy A. Zerinque, John S Jr. Zirlott, Curtis. Zirlott, Jason D. Zirlott, Jeremy. Zirlott, Kimberly. Zirlott, Milton. Zirlott, Perry. Zirlott, Rosa H. Zito, Brian C. Zuvich, Michael A Jr. Ad Hoc Shrimp Trade Action Committee. Bryan Fishermens' Co-Op Inc. Louisiana Shrimp Association. South Carolina Shrimpers Association.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Vietnamese-American Commerical Fisherman's Union.
			3–G Enterprize dba Griffin's Seafood.
			A & G Trawlers Inc.
			A & T Shrimping.
			A Ford Able Seafood.
			A J Horizon Inc.
			A&M Inc.
			A&R Shrimp Co.
			A&T Shrimping.
			AAH Inc.
			AC Christopher Sea Food Inc.
			Ace of Trade LLC.
			Adriana Corp.
			AJ Boats Inc.
			AJ Horizon Inc.
			AJ's Seafood.
			Alario Inc.
			Alcide J Adams Jr.
			Aldebaran Inc.
			Aldebran Inc.
			Alexander and Dola.
			Alfred Englade Inc.
			Alfred Trawlers Inc.
			Allen Hai Tran dba Kien Giang.
			Al's Shrimp Co.
			Al's Shrimp Co LLC.
			Al's Shrimp Co LLC.
			Al's Whosale & Retail.
			Alton Cheeks.
			Amada Inc.
			Amber Waves.
			Amelia Isle.
			American Beauty.
			American Beauty Inc.
			American Eagle Enterprise Inc.
			American Girl.
			American Seafood.
			Americana Shrimp.
			Amvina II.
			Amvina II.
			Amy D Inc.
			Amy's Seafood Mart.
			An Kit.
			Andy Boy.
			Andy's SFD.
			Angel Annie Inc.
			Angel Leigh.
			Angel Seafood Inc.
			Angela Marie Inc.
			Angela Marie Inc.
			Angelina Inc.
			Anna Grace LLC.
			Anna Grace LLC.
			Annie Thornton Inc.
			Annie Thornton Inc.
			Anthony Boy I.
			Anthony Boy I.
			Anthony Fillinich Sr.
			Apalachee Girl Inc.
			Aparicio Trawlers Inc dba Marcosa.
			Apple Jack Inc.
			Aquila Seafood Inc.
			Aquillard Seafood.
			Argo Marine.
			Arnold's Seafood.
			Arroya Cruz Inc.
			Art & Red Inc.
			Arthur Chisholm.
			A–Seafood Express.
			Ashley Deeb Inc.
			Ashley W 648675.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Asian Gulf Corp. Atlantic. Atocha Troy A LeCompte Sr. Atwood Enterprises. B & B Boats Inc. B & B Seafood. B&J Seafood. BaBe Inc. Baby Ruth. Bailey, David B Sr—Bailey's Seafood. Bailey's Seafood of Cameron Inc. Bait Inc. Bait Inc. Baker Shrimp. Bama Love Inc. Bama Sea Products Inc. Bao Hung Inc. Bao Hung Inc. Bar Shrimp. Barbara Brooks Inc. Barbara Brooks Inc. Barisich Inc. Barisich Inc. Barnacle-Bill Inc. Barney's Bait & Seafood. Barrios Seafood. Bay Boy. Bay Islander Inc. Bay Sweeper Nets. Baye's Seafood 335654. Bayou Bounty Seafood LLC. Bayou Caddy Fisheries Inc. Bayou Carlin Fisheries. Bayou Carlin Fisheries Inc. Bayou Shrimp Processors Inc. BBC Trawlers Inc. BBS Inc. Beachcomber Inc. Beachcomber Inc. Bea's Corp. Beecher's Seafood. Believer Inc. Bennett's Seafood. Benny Alexie. Bergeron's Seafood. Bertileana Corp. Best Sea-Pack of Texas Inc. Beth Lomonte Inc. Beth Lomonte Inc. Betty B. Betty H Inc. Bety Inc. BF Millis & Sons Seafood. Big Daddy Seafood Inc. Big Grapes Inc. Big Kev. Big Oak Seafood. Big Oak Seafood. Big Oaks Seafood. Big Shrimp Inc. Billy J Foret—BJF Inc. Billy Sue Inc. Billy Sue Inc. Biloxi Freezing & Processing. Binh Duong. BJB LLC. Blain & Melissa Inc. Blanca Cruz Inc. Blanchard & Cheramie Inc. Blanchard Seafood. Blazing Sun Inc. Blazing Sun Inc. Blue Water Seafood.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Bluewater Shrimp Co. Bluffton Oyster Co. Boat Josey Wales. Boat Josey Wales LLC. Boat Monica Kiff. Boat Warrior. Bob-Rey Fisheries Inc. Bodden Trawlers Inc. Bolillo Prieto Inc. Bon Secour Boats Inc. Bon Secour Fisheries Inc. Bon Secur Boats Inc. Bonnie Lass Inc. Boone Seafood. Bosarge Boats. Bosarge Boats. Bosarge Boats Inc. Bottom Verification LLC. Bowers Shrimp. Bowers Shrimp Farm. Bowers Valley Shrimp Inc. Brad Friloux. Brad Nicole Seafood. Bradley John Inc. Bradley's Seafood Mkt. Brara Cruz Inc. Brenda Darlene Inc. Brett Anthony. Bridgeside Marina. Bridgeside Seafood. Bridget's Seafood Service Inc. Bridget's Seafood Service Inc. BRS Seafood. BRS Seafood. Bruce W Johnson Inc. Bubba Daniels Inc. Bubba Tower Shrimp Co. Buccaneer Shrimp Co. Buchmer Inc. Buck & Peed Inc. Buddy Boy Inc. Buddy's Seafood. Bumble Bee Seafoods LLC. Bumble Bee Seafoods LLC. Bundy Seafood. Bundy's Seafood. Bunny's Shrimp. Burgbe Gump Seafood. Burnell Trawlers Inc. Burnell Trawlers Inc/Mamacita/Swamp Irish. Buster Brown Inc. By You Seafood. C & R Trawlers Inc. CA Magwood Enterprises Inc. Cajun Queen of LA LLC. Calcasien Point Bait N More Inc. Cam Ranh Bay. Camardelle's Seafood. Candy Inc. Cao Family Inc. Cap Robear. Cap'n Bozo Inc. Capn Jasper's Seafood Inc. Capt Aaron. Capt Adam. Capt Anthony Inc. Capt Bean (Richard A Ragas). Capt Beb Inc. Capt Bill Jr Inc. Capt Brother Inc. Capt Bubba. Capt Buck. Capt Carl.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Capt Carlos Trawlers Inc. Capt Chance Inc. Capt Christopher Inc. Capt Chuckie. Capt Craig. Capt Craig Inc. Capt Crockett Inc. Capt Darren Hill Inc. Capt Dennis Inc. Capt Dickie Inc. Capt Dickie V Inc. Capt Doug. Capt Eddie Inc. Capt Edward Inc. Capt Eli's. Capt Elroy Inc. Capt Ernest LLC. Capt Ernest LLC. Capt GDA Inc. Capt George. Capt H & P Corp. Capt Havey Seafood. Capt Henry Seafood Dock. Capt Huy. Capt JDL Inc. Capt Jimmy Inc. Capt Joe. Capt Johnny II. Capt Jonathan. Capt Jonathan Inc. Capt Joshua Inc. Capt Jude 520556 13026. Capt Ken. Capt Kevin Inc. Capt Ko Inc. Capt Koung Lim. Capt Larry Seafood Market. Capt Larry's Inc. Capt LC Corp. Capt LD Seafood Inc. Capt Linton Inc. Capt Mack Inc. Capt Marcus Inc. Capt Morris. Capt Opie. Capt P Inc. Capt Pappie Inc. Capt Pat. Capt Paw Paw. Capt Pete Inc. Capt Peter Long Inc. Capt Pool Bear II's Seafood. Capt Quang. Capt Quina Inc. Capt Richard. Capt Ross Inc. Capt Roy. Capt Russell Jr Inc. Capt Ryan Inc. Capt Ryan's. Capt Sam. Capt Sang. Capt Scar Inc. Capt Scott. Capt Scott 5. Capt Scott Seafood. Capt Sparkers Shrimp. Capt St Peter. Capt T&T Corp. Capt Thien. Capt Tommy Inc. Capt Two Inc. Capt Van's Seafood.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Capt Walley Inc. Capt Zoe Inc. Captain Allen's Bait & Tackle. Captain Arnulfo Inc. Captain Blair Seafood. Captain Dexter Inc. Captain D's. Captain Homer Inc. Captain Jeff. Captain JH III Inc. Captain Joshua. Captain Larry'O. Captain Miss Cammy Nhung. Captain Regis. Captain Rick. Captain T/Thiet Nguyen. Captain Tony. Captain Truong Phi Corp. Captain Vinh. Cap't-Brandon. Captian Thomas Trawler Inc. Carlino Seafood. Carly Sue Inc. Carmelita Inc. Carolina Lady Inc. Carolina Sea Foods Inc. Caroline and Calandra Inc. Carson & Co. Carson & Co Inc. Cary Encalade Trawling. Castellano's Corp. Cathy Cheramie Inc. CBS Seafood & Catering LLC. CBS Seafood & Catering LLC. Cecilia Enterprise Inc. CF Gollot & Son Sfd Inc. CF Gollott and Son Seafood Inc. Chackbay Lady. Chad & Chaz LLC. Challenger Shrimp Co Inc. Chalmette Marine Supply Co Inc. Chalmette Net & Trawl. Chapa Shrimp Trawlers. Chaplin Seafood. Charlee Girl. Charles Guidry Inc. Charles Sellers. Charles White. Charlotte Maier Inc. Charlotte Maier Inc. Chef Seafood Ent LLC. Cheramies Landing. Cherry Pt Seafood. Cheryl Lynn Inc. Chez Francois Seafood. Chilling Pride Inc. Chin Nguyen Co. Chin Nguyen Co. Chinatown Seafood Co Inc. Chines Cajun Net Shop. Chris Hansen Seafood. Christian G Inc. Christina Leigh Shrimp Co. Christina Leigh Shrimp Company Inc. Christina Leigh Shrimp Company Inc. Cieutat Trawlers. Cinco de Mayo Inc. Cindy Lynn Inc. Cindy Mae Inc. City Market Inc. CJ Seafood. CJs Seafood. Clifford Washington.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Clinton Hayes—C&S Enterprises of Brandon Inc. Cochran's Boat Yard. Colorado River Seafood. Colson Marine. Comm Fishing. Commercial Fishing Service CFS Seafoods. Cong Son. Cong-An Inc. Country Girl Inc. Country Inc. Courtney & Ory Inc. Cowdrey Fish. Cptn David. Crab-Man Bait Shop. Craig A Wallis, Keith Wallis dba W&W Dock & 10 boats. Cristina Seafood. CRJ Inc. Cruillas Inc. Crusader Inc. Crustacean Frustration. Crystal Gayle Inc. Crystal Light Inc. Crystal Light Inc. Curtis Henderson. Custom Pack Inc. Custom Pack Inc. Cyril's Ice House & Supplies. D & A Seafood. D & C Seafood Inc. D & J Shrimping LLC. D & M Seafood & Rental LLC. D Ditcharo Jr Seafoods. D G & R C Inc. D S L & R Inc. D&T Marine Inc. Daddys Boys. DaHa Inc/Cat'Sass. DAHAPA Inc. Dale's Seafood Inc. Dang Nguyen. Daniel E Lane. Danny Boy Inc. Danny Max. David & Danny Inc. David C Donnelly. David Daniels. David Ellison Jr. David Gollott Sfd Inc. David W Casanova's Seafood. David White. David's Shrimping Co. Davis Seafood. Davis Seafood. Davis Seafood Inc. Dawn Marie. Deana Cheramie Inc. Deanna Lea. Dean's Seafood. Deau Nook. Debbe Anne Inc. Deep Sea Foods Inc/Jubilee Foods Inc. Delcambre Seafood. Dell Marine Inc. Dennis Menesses Seafood. Dennis' Seafood Inc. Dennis Shrimp Co Inc. Desperado. DFS Inc. Diamond Reef Seafood. Diem Inc. Dinh Nguyen. Dixie General Store LLC.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Dixie Twister. Dominick's Seafood Inc. Don Paco Inc. Donald F Boone II. Dong Nquyen. Donini Seafoods Inc. Donna Marie. Donovan Tien I & II. Dopson Seafood. Dorada Cruz Inc. Double Do Inc. Double Do Inc. Doug and Neil Inc. Douglas Landing. Doxey's Oyster & Shrimp. Dragnet II. Dragnet Inc. Dragnet Seafood LLC. Dubberly's Mobile Seafood. Dudenhefer Seafood. Dugas Shrimp Co LLC. Dunamis Towing Inc. Dupree's Seafood. Duval & Duval Inc. Dwayne's Dream Inc. E & M Seafood. E & T Boating. E Gardner McClellan. E&E Shrimp Co Inc. East Coast Seafood. East Coast Seafood. East Coast Seafood. East Coast Seafood. Edisto Queen LLC. Edward Garcia Trawlers. EKV Inc. El Pedro Fishing & Trading Co Inc. Eliminator Inc. Elizabeth Nguyen. Ellerbee Seafoods. Ellie May. Elmira Pflueckhahn Inc. Elmira Pflueckhahn Inc. Elvira G Inc. Emily's SFD. Emmanuel Inc. Ensenada Cruz Inc. Enterprise. Enterprise Inc. Equalizer Shrimp Co Inc. Eric F Dufrene Jr LLC. Erica Lynn Inc. Erickson & Jensen Seafood Packers. Ethan G Inc. Excalibur LLC. F/V Apalachee Warrior. F/V Atlantis I. F/V Capt Walter B. F/V Captain Andy. F/V Eight Flags. F/V Mary Ann. F/V Miss Betty. F/V Morning Star. F/V Nam Linh. F/V Olivia B. F/V Phuoc Thanh Mai II. F/V Sea Dolphin. F/V Southern Grace. F/V Steven Mai. F/V Steven Mai II. Famer Boys Catfish Kitchens. Family Thing. Father Dan Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Father Lasimir Inc. Father Mike Inc. Fiesta Cruz Inc. Fine Shrimp Co. Fire Fox Inc. Fisherman's Reef Shrimp Co. Fishermen IX Inc. Fishing Vessel Enterprise Inc. Five Princesses Inc. FKM Inc. Fleet Products Inc. Flower Shrimp House. Flowers Seafood Co. Floyd's Wholesale Seafood Inc. Fly By Night Inc. Forest Billiot Jr. Fortune Shrimp Co Inc. FP Oubre. Francis Brothers Inc. Francis Brothers Inc. Francis III. Frank Toomer Jr. Fran-Tastic Too. Frederick-Dan. Freedom Fishing Inc. Freeman Seafood. Frelich Seafood Inc. Frenchie D–282226. Fripp Point Seafood. G & L Trawling Inc. G & O Shrimp Co Inc. G & O Trawlers Inc. G & S Trawlers Inc. G D Ventures II Inc. G G Seafood. G R LeBlanc Trawlers Inc. Gail's Bait Shop. Gale Force Inc. Gambler Inc. Gambler Inc. Garijak Inc. Gary F White. Gator's Seafood. Gay Fish Co. Gay Fish Co. GeeChee Fresh Seafood. Gemita Inc. Gene P Callahan Inc. George J Price Sr Ent Inc. Georgia Shrimp Co LLC. Gerica Marine. Gilden Enterprises. Gillikin Marine Railways Inc. Gina K Inc. Gisco Inc. Gisco Inc. Glenda Guidry Inc. Gloria Cruz Inc. Go Fish Inc. God's Gift. God's Gift Shrimp Vessel. Gogie. Gold Coast Seafood Inc. Golden Gulf Coast Pkg Co Inc. Golden Phase Inc. Golden Text Inc. Golden Text Inc. Golden Text Inc. Goldenstar. Gollott Brothers Sfd Co Inc. Gollott's Oil Dock & Ice House Inc. Gonzalez Trawlers Inc. Gore Enterprises Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Gore Enterprizes Inc. Gore Seafood Co. Gore Seafood Inc. Gove Lopez. Graham Fisheries Inc. Graham Shrimp Co Inc. Graham Shrimp Co Inc. Gramps Shrimp Co. Grandma Inc. Grandpa's Dream. Grandpa's Dream. Granny's Garden and Seafood. Green Flash LLC. Greg Inc. Gregory Mark Gaubert. Gregory Mark Gaubert. Gregory T Boone. Gros Tete Trucking Inc. Guidry's Bait Shop. Guidry's Net Shop. Gulf Central Seaood Inc. Gulf Crown Seafood Co Inc. Gulf Fish Inc. Gulf Fisheries Inc. Gulf Island Shrimp & Seafood II LLC. Gulf King Services Inc. Gulf Pride Enterprises Inc. Gulf Seaway Seafood Inc. Gulf Shrimp. Gulf South Inc. Gulf Stream Marina LLC. Gulf Sweeper Inc (Trawler Gulf Sweeper). Gypsy Girl Inc. H & L Seafood. Hack Berry Seafood. Hagen & Miley Inc. Hailey Marie Inc. Hanh Lai Inc. Hannah Joyce Inc. Hardy Trawlers. Hardy Trawlers. Harrington Fish Co Inc. Harrington Seafood & Supply Inc. Harrington Shrimp Co Inc. Harrington Trawlers Inc. Harris Fisheries Inc. Hazel's Hustler. HCP LLC. Heather Lynn Inc. Heavy Metal Inc. Hebert Investments Inc. Hebert's Mini Mart LLC. Helen E Inc. Helen Kay Inc. Helen Kay Inc. Helen W Smith Inc. Henderson Seafood. Henry Daniels Inc. Hermosa Cruz Inc. Hi Seas of Dulac Inc. Hien Le Van Inc. High Hope Inc. Hoang Anh. Hoang Long I, II. Holland Enterprises. Holly Beach Seafood. Holly Marie's Seafood Market. Hombre Inc. Home Loving Care Co. Hondumex Ent Inc. Hong Nga Inc. Hongri Inc. Houston Foret Seafood.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Howerin Trawlers Inc. HTH Marine Inc. Hubbard Seafood. Hurricane Emily Seafood Inc. Hutcherson Christian Shrimp Inc. Huyen Inc. Icy Seafood II Inc. ICY Seafood Inc. Icy Seafood Inc. Ida's Seafood Rest & Market. Ike & Zack Inc. Independent Fish Company Inc. Inflation Inc. Integrity Fisheries Inc. Integrity Fishing Inc. International Oceanic Ent. Interstate Vo LLC. Intracoastal Seafood Inc. Iorn Will Inc. Irma Trawlers Inc. Iron Horse Inc. Isabel Maier Inc. Isabel Maier Inc. Isla Cruz Inc. J & J Rentals Inc. J & J Trawler's Inc. J & R Seafood. J Collins Trawlers. J D Land Co. Jackie & Hiep Trieu. Jacob A Inc. Jacquelin Marie Inc. Jacquelin Marie Inc. James D Quach Inc. James E Scott III. James F Dubberly. James Gadson. James J Matherne Jr. James J Matherne Sr. James Kenneth Lewis Sr. James LaRive Jr. James W Green Jr dba Miss Emilie Ann. James W Hicks. Janet Louise Inc. Jani Marie. JAS Inc. JBS Packing Co Inc. JBS Packing Inc. JCM. Jean's Bait. Jeff Chancey. Jemison Trawler's Inc. Jenna Dawn LLC. Jennifer Nguyen—Capt T. Jensen Seafood Pkg Co Inc. Jesse LeCompte Jr. Jesse LeCompte Sr. Jesse Shantelle Inc. Jessica Ann Inc. Jessica Inc. Jesus G Inc. Jimmy and Valerie Bonvillain. Jimmy Le Inc. Jim's Cajen Shrimp. Joan of Arc Inc. JoAnn and Michael W Daigle. Jody Martin. Joe Quach. Joel's Wild Oak Bait Shop & Fresh Seafood. John A Norris. John J Alexie. John Michael E Inc. John V Alexie.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Johnny & Joyce's Seafood. Johnny O Co. Johnny's Seafood. John's Seafood. Joker's Wild. Jones—Kain Inc. Joni John Inc (Leon J Champagne). Jon's C Seafood Inc. Joseph Anthony. Joseph Anthony Inc. Joseph Garcia. Joseph Martino. Joseph Martino Corp. Joseph T Vermeulen. Josh & Jake Inc. Joya Cruz Inc. JP Fisheries. Julie Ann LLC. Julie Hoang. Julie Shrimp Co Inc (Trawler Julie). Julio Gonzalez Boat Builders Inc. Justin Dang. JW Enterprise. K & J Trawlers. K&D Boat Company. K&S Enterprises Inc. Kalliainen Seafoods Inc. KAM Fishing. Kandi Sue Inc. Karl M Belsome LLC. KBL Corp. KDH Inc. Keith M Swindell. Kellum's Seafood. Kellum's Seafood. Kelly Marie Inc. Ken Lee's Dock LLC. Kenneth Guidry. Kenny-Nancy Inc. Kentucky Fisheries Inc. Kentucky Trawlers Inc. Kevin & Bryan (M/V). Kevin Dang. Khang Dang. Khanh Huu Vu. Kheng Sok Shrimping. Kim & James Inc. Kim Hai II Inc. Kim Hai Inc. Kim's Seafood. Kingdom World Inc. Kirby Seafood. Klein Express. KMB Inc. Knight's Seafood Inc. Knight's Seafood Inc. Knowles Noel Camardelle. Kramer's Bait Co. Kris & Cody Inc. KTC Fishery LLC. L & M. L & N Friendship Corp. L & O Trawlers Inc. L & T Inc. L&M. LA—3184 CA. La Belle Idee. La Macarela Inc. La Pachita Inc. LA–6327–CA. LaBauve Inc. LaBauve Inc. Lade Melissa Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Lady Agnes II. Lady Agnes III. Lady Amelia Inc. Lady Anna I. Lady Anna II. Lady Barbara Inc. Lady Carolyn Inc. Lady Catherine. Lady Chancery Inc. Lady Chelsea Inc. Lady Danielle. Lady Debra Inc. Lady Dolcina Inc. Lady Gail Inc. Lady Katherine Inc. Lady Kelly Inc. Lady Kelly Inc. Lady Kristie. Lady Lavang LLC. Lady Liberty Seafood Co. Lady Lynn Ltd. Lady Marie Inc. Lady Melissa Inc. Lady Shelly. Lady Shelly. Lady Snow Inc. Lady Stephanie. Lady Susie Inc. Lady T Kim Inc. Lady TheLna. Lady Toni Inc. Lady Veronica. Lafitte Frozen Foods Corp. Lafont Inc. Lafourche Clipper Inc. Lafourche Clipper Inc. Lamarah Sue Inc. Lan Chi Inc. Lan Chi Inc. Lancero Inc. Lanny Renard and Daniel Bourque. Lapeyrouse Seafood Bar Groc Inc. Larry G Kellum Sr. Larry Scott Freeman. Larry W Hicks. Lasseigne & Sons Inc. Laura Lee. Lauren O. Lawrence Jacobs Sfd. Lazaretta Packing Inc. Le & Le Inc. Le Family Inc. Le Family Inc. Le Tra Inc. Leek & Millington Trawler Privateeer. Lee's Sales & Distribution. Leonard Shrimp Producers Inc. Leoncea B Regnier. Lerin Lane. Li Johnson. Liar Liar. Libertad Fisheries Inc. Liberty I. Lighthouse Fisheries Inc. Lil Aly. Lil Arthur Inc. Lil BJ LLC. Lil Robbie Inc. Lil Robbie Inc. Lil Robin. Lil Robin. Lilla. Lincoln.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Linda & Tot Inc. Linda Cruz Inc. Linda Hoang Shrimp. Linda Lou Boat Corp. Linda Lou Boat Corp. Lisa Lynn Inc. Lisa Lynn Inc. Little Andrew Inc. Little Andy Inc. Little Arthur. Little David Gulf Trawler Inc. Little Ernie Gulf Trawler Inc. Little Ken Inc. Little Mark. Little William Inc. Little World. LJL Inc. Long Viet Nguyen. Longwater Seafood dba Ryan H Longwater. Louisiana Gulf Shrimp LLC. Louisiana Lady Inc. Louisiana Man. Louisiana Newpack Shrimp Co Inc. Louisiana Pride Seafood Inc. Louisiana Pride Seafood Inc. Louisiana Seafood Dist LLC. Louisiana Shrimp & Packing Inc. Louisiana Shrimp and Packing Co Inc. Lovely Daddy II & III. Lovely Jennie. Low Country Lady (Randolph N Rhodes). Low County Lady. Luchador Inc. Lucky. Lucky I. Lucky Jack Inc. Lucky Lady. Lucky Lady II. Lucky Leven Inc. Lucky MV. Lucky Ocean. Lucky Sea Star Inc. Lucky Star. Lucky World. Lucky's Seafood Market & Poboys LLC. Luco Drew's. Luisa Inc. Lupe Martinez Inc. LV Marine Inc. LW Graham Inc. Lyle LeCompte. Lynda Riley Inc. Lynda Riley Inc. M & M Seafood. M V Sherry D. M V Tony Inc. M&C Fisheries. M/V Baby Doll. M/V Chevo's Bitch. M/V Lil Vicki. M/V Loco-N Motion. M/V Patsy K #556871. M/V X L. Mabry Allen Miller Jr. Mad Max Seafood. Madera Cruz Inc. Madison Seafood. Madlin Shrimp Co Inc. Malibu. Malolo LLC. Mamacita Inc. Man Van Nguyen. Manteo Shrimp Co.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Marco Corp. Marcos A. Maria Elena Inc. Maria Sandi. Mariachi Trawlers Inc. Mariah Jade Shrimp Company. Marie Teresa Inc. Marine Fisheries. Marisa Elida Inc. Mark and Jace. Marleann. Martin's Fresh Shrimp. Mary Bea Inc. Master Brandon Inc. Master Brock. Master Brock. Master Dylan. Master Gerald Trawlers Inc. Master Hai. Master Hai II. Master Henry. Master Jared Inc. Master Jhy Inc. Master John Inc. Master Justin Inc. Master Justin Inc. Master Ken Inc. Master Kevin Inc. Master Martin Inc. Master Mike Inc. Master NT Inc. Master Pee-Wee. Master Ronald Inc. Master Scott. Master Scott II. Master Seelos Inc. Master T. Master Tai LLC. Master Tai LLC. Mat Roland Seafood Co. Maw Doo. Mayflower. McQuaig Shrimp Co Inc. Me Kong. Melerine Seafood. Melody Shrimp Co. Mer Shrimp Inc. Michael Lynn. Michael Nguyen. Michael Saturday's Fresh Every Day South Carolina Shrimp. Mickey Nelson Net Shop. Mickey's Net. Midnight Prowler. Mike's Seafood Inc. Miley's Seafood Inc. Militello and Son Inc. Miller & Son Seafood Inc. Miller Fishing. Milliken & Son's. Milton J Dufrene and Son Inc. Milton Yopp—Capt'n Nathan & Thomas Winfield. Minh & Liem Doan. Mis Quynh Chi II. Miss Adrianna Inc. Miss Alice Inc. Miss Ann Inc. Miss Ann Inc. Miss Ashleigh. Miss Ashleigh Inc. Miss Barbara. Miss Barbara Inc. Miss Bernadette A Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Miss Bertha (M/V). Miss Beverly Kay. Miss Brenda. Miss Candace. Miss Candace Nicole Inc. Miss Carla Jean Inc. Miss Caroline Inc. Miss Carolyn Louise Inc. Miss Caylee. Miss Charlotte Inc. Miss Christine III. Miss Cleda Jo Inc. Miss Courtney Inc. Miss Courtney Inc. Miss Cynthia. Miss Danielle Gulf Trawler Inc. Miss Danielle LLC. Miss Dawn. Miss Ellie Inc. Miss Faye LLC. Miss Fina Inc. Miss Georgia Inc. Miss Hannah. Miss Hannah Inc. Miss Hazel Inc. Miss Hilary Inc. Miss Jennifer Inc. Miss Joanna Inc. Miss Julia. Miss Kandy Tran LLC. Miss Kandy Tran LLC. Miss Karen. Miss Kathi Inc. Miss Kathy. Miss Kaylyn LLC. Miss Khayla. Miss Lil. Miss Lillie Inc. Miss Liz Inc. Miss Loraine. Miss Loraine Inc. Miss Lori Dawn IV Inc. Miss Lori Dawn V Inc. Miss Lori Dawn VI Inc. Miss Lori Dawn VII Inc. Miss Lorie Inc. Miss Luana D Shrimp Co. Miss Luana D Shrimp Co. Miss Madeline Inc. Miss Madison. Miss Marie. Miss Marie Inc. Miss Marilyn Louis Inc. Miss Marilyn Louise. Miss Marilyn Louise Inc. Miss Marissa Inc. Miss Martha Inc. Miss Martha Inc. Miss Mary T. Miss Myle. Miss Narla. Miss Nicole. Miss Nicole Inc. Miss Plum Inc. Miss Quynh Anh I. Miss Quynh Anh I LLC. Miss Quynh Anh II LLC. Miss Redemption LLC. Miss Rhianna Inc. Miss Sambath. Miss Sandra II. Miss Sara Ann. Miss Savannah.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Miss Savannah II.
			Miss Soriya.
			Miss Suzanne.
			Miss Sylvia.
			Miss Than.
			Miss Thom.
			Miss Thom Inc.
			Miss Tina Inc.
			Miss Trinh Trinh.
			Miss Trisha Inc.
			Miss Trisha Inc.
			Miss Verna Inc.
			Miss Vicki.
			Miss Victoria Inc.
			Miss Vivian Inc.
			Miss WillaDean.
			Miss Winnie Inc.
			Miss Yvette Inc.
			Miss Yvonne.
			Misty Morn Eat.
			Misty Star.
			MJM Seafood Inc.
			M'M Shrimp Co Inc.
			Mom & Dad Inc.
			Mona-Dianne Seafood.
			Montha Sok and Tan No Le.
			Moon River Inc.
			Moon Tillett Fish Co Inc.
			Moonlight.
			Moonlight Mfg.
			Moore Trawlers Inc.
			Morgan Creek Seafood.
			Morgan Rae Inc.
			Morning Star.
			Morrison Seafood.
			Mother Cabrini.
			Mother Teresa Inc.
			Mr & Mrs Inc.
			Mr & Mrs Inc.
			Mr Coolly.
			Mr Fox.
			Mr Fox.
			Mr G.
			Mr Gaget LLC.
			Mr Henry.
			Mr Natural Inc.
			Mr Neil.
			Mr Phil T Inc.
			Mr Sea Inc.
			Mr Verdin Inc.
			Mr Williams.
			Mrs Judy Too.
			Mrs Tina Lan Inc.
			Ms Alva Inc.
			Ms An.
			My Angel II.
			My Blues.
			My Dad Whitney Inc.
			My Girls LLC.
			My Thi Tran Inc.
			My Three Sons Inc.
			My V Le Inc.
			My-Le Thi Nguyen.
			Myron A Smith Inc.
			Nancy Joy.
			Nancy Joy Inc.
			Nancy Joy Inc.
			Nanny Granny Inc.
			Nanny Kat Seafood LLC.
			Napolean Seafoods.
			Napoleon II.
			Napoleon Seafood.
			Napoleon SF.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Naquin's Seafood. Nautilus LLC. Nelma Y Lane. Nelson and Son. Nelson Trawlers Inc. Nelson's Quality Shrimp Company. Nevgulmarco Co Inc. New Deal Comm Fishing. New Way Inc. Nguyen Day Van. Nguyen Express. Nguyen Int'l Enterprises Inc. Nguyen Shipping Inc. NHU UYEN. Night Moves of Cut Off Inc. Night Shift LLC. Night Star. North Point Trawlers Inc. North Point Trawlers Inc. Nuestra Cruz Inc. Nunez Seafood. Oasis. Ocean Bird Inc. Ocean Breeze Inc. Ocean Breeze Inc. Ocean City Corp. Ocean Emperor Inc. Ocean Harvest Wholesale Inc. Ocean Pride Seafood Inc. Ocean Seafood. Ocean Select Seafood LLC. Ocean Springs Seafood Market Inc. Ocean Wind Inc. Oceanica Cruz Inc. Odin LLC. Old Maw Inc. Ole Holbrook's Fresh Fish Market LLC. Ole Nelle. One Stop Bait & Ice. Open Sea Inc. Orage Enterprises Inc. Orn Roeum Shrimping. Otis Cantrelle Jr. Otis M Lee Jr. Owens Shrimping. Palmetto Seafood Inc. Papa Rod Inc. Papa T. Pappy Inc. Pappy's Gold. Parfait Enterprises Inc. Paris/Asia. Parramore Inc. Parrish Shrimping Inc. Pascagoula Ice & Freezer Co Inc. Pat-Lin Enterprises Inc. Patricia Foret. Patrick Sutton Inc. Patty Trish Inc. Paul Piazza and Son Inc. Paw Paw Allen. Paw Paw Pride Inc. Pearl Inc dba Indian Ridge Shrimp Co. Pei Gratia Inc. Pelican Point Seafood Inc. Penny V LLC. Perlita Inc. Perseverance I LLC. Pete & Queenie Inc. Phat Le and Le Tran. Phi Long Inc. Phi-Ho LLC. Pip's Place Marina Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Plaisance Trawlers Inc. Plata Cruz Inc. Poc-Tal Trawlers Inc. Pointe-Aux-Chene Marina. Pontchautrain Blue Crab. Pony Express. Poppee. Poppy's Pride Seafood. Port Bolivar Fisheries Inc. Port Marine Supplies. Port Royal Seafood Inc. Poteet Seafood Co Inc. Potter Boats Inc. Price Seafood Inc. Prince of Tides. Princess Ashley Inc. Princess Celine Inc. Princess Cindy Inc. Princess Lorie LLC. Princess Mary Inc. Prosperity. PT Fisheries Inc. Punch's Seafood Mkt. Purata Trawlers Inc. Pursuer Inc. Quality Seafood. Quang Minh II Inc. Queen Lily Inc. Queen Mary. Queen Mary Inc. Quinta Cruz Inc. Quoc Bao Inc. Quynh NHU Inc. Quynh Nhu Inc. R & J Inc. R & K Fisheries LLC. R & L Shrimp Inc. R & P Fisheries. R & R Bait/Seafood. R & S Shrimping. R & T Atocha LLC. R&D Seafood. R&K Fisheries LLC. R&R Seafood. RA Lesso Brokerage Co Inc. RA Lesso Seafood Co Inc. Rachel-Jade. Ralph Lee Thomas Jr. Ralph W Jones. Ramblin Man Inc. Ranchero Trawlers Inc. Randall J Pinell Inc. Randall J Pinell Inc. Randall K and Melissa B Richard. Randall Pinell. Randy Boy Inc. Randy Boy Inc. Rang Dong. Raul L Castellanos. Raul's Seafood. Raul's Seafood. Rayda Cheramie Inc. Raymond LeBouef. RCP Seafood I II III. RDR Shrimp Inc. Reagan's Seafood. Rebecca Shrimp Co Inc. Rebel Seafood. Regulus. Rejimi Inc. Reno's Sea Food. Res Vessel. Reyes Trawlers Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Rick's Seafood Inc. Ricky B LLC. Ricky G Inc. Riffle Seafood. Rigolets Bait & Seafood LLC. Riverside Bait & Tackle. RJ's. Roatex Ent Inc. Robanie C Inc. Robanie C Inc. Robanie C Inc. Robert E Landry. Robert H Schrimpf. Robert Johnson. Robert Keenan Seafood. Robert Upton or Terry Upton. Robert White Seafood. Rockin Robbin Fishing Boat Inc. Rodney Hereford Jr. Rodney Hereford Sr. Rodney Hereford Sr. Roger Blanchard Inc. Rolling On Inc. Romo Inc. Ronald Louis Anderson Jr. Rosa Marie Inc. Rose Island Seafood. RPM Enterprises LLC. Rubi Cruz Inc. Ruf-N–Redy Inc. Rutley Boys Inc. Sadie D Seafood. Safe Harbour Seafood Inc. Salina Cruz Inc. Sally Kim III. Sally Kim IV. Sam Snodgrass & Co. Samaira Inc. San Dia. Sand Dollar Inc. Sandy N. Sandy O Inc. Santa Fe Cruz Inc. Santa Maria I Inc. Santa Maria II. Santa Monica Inc. Scavanger. Scooby Inc. Scooby Inc. Scottie and Juliette Dufrene. Scottie and Juliette Dufrene. Sea Angel. Sea Angel Inc. Sea Bastion Inc. Sea Drifter Inc. Sea Durbin Inc. Sea Eagle. Sea Eagle Fisheries Inc. Sea Frontier Inc. Sea Gold Inc. Sea Gulf Fisheries Inc. Sea Gypsy Inc. Sea Hawk I Inc. Sea Horse Fisheries. Sea Horse Fisheries Inc. Sea King Inc. Sea Pearl Seafood Company Inc. Sea Queen IV. Sea Trawlers Inc. Sea World. Seabrook Seafood Inc. Seabrook Seafood Inc. Seafood & Us Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Seaman's Magic Inc. Seaman's Magic Inc. Seaside Seafood Inc. Seaweed 2000. Seawolf Seafood. Second Generation Seafood. Shark Co Seafood Inter Inc. Sharon—Ali Michelle Inc. Shelby & Barbara Seafood. Shelby & Barbara Seafood. Shelia Marie LLC. Shell Creek Seafood Inc. Shirley Elaine. Shirley Girl LLC. Shrimp Boat Patrice. Shrimp Boating Inc. Shrimp Express. Shrimp Man. Shrimp Networks Inc. Shrimp Trawler. Shrimper. Shrimper. Shrimpy's. Si Ky Lan Inc. Si Ky Lan Inc. Si Ky Lan Inc. Sidney Fisheries Inc. Silver Fox. Silver Fox LLC. Simon. Sims Shrimping. Skip Toomer Inc. Skip Toomer Inc. Skyla Marie Inc. Smith & Sons Seafood Inc. Snowdrift. Snowdrift. Sochenda. Soeung Phat. Son T Le Inc. Son's Pride Inc. Sophie Marie Inc. Soul Mama Inc. Souther Obsession Inc. Southern Lady. Southern Nightmare Inc. Southern Star. Southshore Seafood. Spencers Seafood. Sprig Co Inc. St Anthony Inc. St Daniel Phillip Inc. St Dominic. St Joseph. St Joseph. St Joseph II Inc. St Joseph III Inc. St Joseph IV Inc. St Martin. St Martyrs VN. St Mary Seafood. St Mary Seven. St Mary Tai. St Michael Fuel & Ice Inc. St Michael's Ice & Fuel. St Peter. St Peter 550775. St Teresa Inc. St Vincent Andrew Inc. St Vincent Gulf Shrimp Inc. St Vincent One B. St Vincent One B Inc. St Vincent SF.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			St Vincent Sfd Inc. Start Young Inc. Steamboat Bills Seafood. Stella Mestre Inc. Stephen Dantin Jr. Stephney's Seafood. Stipelcovich Marine Wks. Stone-Co Farms LP. Stone-Co Farms LP. Stormy Sean Inc. Stormy Seas Inc. Sun Star Inc. Sun Swift Inc. Sunshine. Super Coon Inc. Super Cooper Inc. Swamp Irish Inc. Sylvan P Racine Jr—Capt Romain. T & T Seafood. T Brothers. T Cvitanovich Seafood LLC. Ta Do. Ta T Vo Inc. Ta T Vo Inc. Tana Inc. Tanya Lea Inc. Tanya Lea Inc. Tanya Lea Inc. Tasha Lou. T–Brown Inc. Tee Frank Inc. Tee Tigre Inc. Tercera Cruz Inc. Terrebonne Seafood Inc. Terri Monica. Terry Luke Corp. Terry Luke Corp. Terry Luke Corp. Terry Lynn Inc. Te-Sam Inc. Texas 1 Inc. Texas 18 Inc. Texas Lady Inc. Texas Pack Inc. Tex-Mex Cold Storage Inc. Tex-Mex Cold Storage Inc. Thai & Tran Inc. Thai Bao Inc. Thanh Phong. The Boat Phat Tai. The Fishermans Dock. The Last One. The Light House Bait & Seafood Shack LLC. The Mayporter Inc. The NGO. The Seafood Shed. Thelma J Inc. Theresa Seafood Inc. Third Tower Inc. Thomas Winfield—Capt Nathan. Thompson Bros. Three C's. Three Dads. Three Sons. Three Sons Inc. Three Sons Inc. Thunder Roll. Thunderbolt Fisherman's Seafood Inc. Thy Tra Inc. Thy Tra Inc. Tidelands Seafood Co Inc. Tiffani Claire Inc. Tiffani Claire Inc.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Tiger Seafood. Tikede Inc. Timmy Boy Corp. Tina Chow. Tina T LLC. Tino Mones Seafood. TJ's Seafood. Toan Inc. Todd Co. Todd's Fisheries. Tom LE LLC. Tom Le LLC. Tom N & Bill N Inc. Tommy Bui dba Mana II. Tommy Cheramie Inc. Tommy Gulf Sea Food Inc. Tommy's Seafood Inc. Tonya Jane Inc. Tony-N. Tookie Inc. Tot & Linda Inc. T–Pops Inc. Tran Phu Van. Tran's Express Inc. Travis—Shawn. Travis—Shawn. Trawler Azteca. Trawler Becky Lyn Inc. Trawler Capt GC. Trawler Capt GC II. Trawler Dalia. Trawler Doctor Bill. Trawler Gulf Runner. Trawler HT Seaman. Trawler Joyce. Trawler Kristi Nicole. Trawler Kyle & Courtney. Trawler Lady Catherine. Trawler Lady Gwen Doe. Trawler Linda B Inc. Trawler Linda June. Trawler Little Brothers. Trawler Little Gavino. Trawler Little Rookie Inc. Trawler Mary Bea. Trawler Master Alston. Trawler Master Jeffery Inc. Trawler Michael Anthony Inc. Trawler Mildred Barr. Trawler Miss Alice Inc. Trawler Miss Jamie. Trawler Miss Kelsey. Trawler Miss Sylvia Inc. Trawler Mrs Viola. Trawler Nichols Dream. Trawler Raindear Partnership. Trawler Rhonda Kathleen. Trawler Rhonda Lynn. Trawler Sandra Kay. Trawler Sarah Jane. Trawler Sea Wolf. Trawler Sea Wolf. Trawler SS Chaplin. Trawler The Mexican. Trawler Wallace B. Trawler Wylie Milam. Triple C Seafood. Triple T Enterprises Inc. Triplets Production. Tropical SFD. Troy A LeCompte Sr. True World Foods Inc. T's Seafood.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			Tu Viet Vu. TVN Marine Inc. TVN Marine Inc. Two Flags Inc. Tyler James. Ultima Cruz Inc. UTK Enterprises Inc. V & B Shrimping LLC. Valona Sea Food. Valona Seafood Inc. Van Burren Shrimp Co. Vaquero Inc. Varon Inc. Venetian Isles Marina. Venice Seafood Exchange Inc. Venice Seafood LLC. Vera Cruz Inc. Veronica Inc. Versaggi Shrimp Corp. Victoria Rose Inc. Viet Giang Corp. Vigilante Trawlers Inc. Village Creek Seafood. Villers Seafood Co Inc. Vina Enterprises Inc. Vincent L Alexie Jr. Vincent Piazza Jr & Sons Seafood Inc. Vin-Penny. Vivian Lee Inc. Von Harten Shrimp Co Inc. VT & L Inc. Vu NGO. Vu-Nguyen Partners. W L & O Inc. Waccamaw Producers. Wait-N–Sea Inc. Waller Boat Corp. Walter R Hicks. Ward Seafood Inc. Washington Seafood. Watermen Industries Inc. Watermen Industries Inc. Waymaker Inc. Wayne Estay Shrimp Co Inc. WC Trawlers Inc. We Three Inc. We Three Inc. Webster's Inc. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros. Weems Bros Seafood. Weems Bros Seafood Co. Weiskopf Fisheries LLC. Wendy & Eric Inc. Wescovich Inc. West Point Trawlers Inc. Westley J Domangue. WH Blanchard Inc. Whiskey Joe Inc. White and Black. White Bird.

Commerce Case No.	Commission Case No.	Product/Country	Petitioners/Supporters
			White Foam. White Gold. Wilcox Shrimping Inc. Wild Bill. Wild Eagle Inc. William E Smith Jr Inc. William Lee Inc. William O Nelson Jr. William Patrick Inc. William Smith Jr Inc. Willie Joe Inc. Wind Song Inc. Wonder Woman. Woods Fisheries Inc. Woody Shrimp Co Inc. Yeaman's Inc. Yen Ta. Yogi's Shrimp. You & Me Shrimp. Ysclaskey Seafood. Zirlott Trawlers Inc. Zirlott Trawlers Inc.

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Friday,
May 29, 2009

Part III

Department of Labor

Employment and Training Administration
20 CFR Part 655

Wage and Hour Division

29 CFR Parts 501, 780, and 788

Temporary Employment of H–2A Aliens in the United States; Final Rule; Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2009 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Parts 501, 780, and 788

RIN 1205–AB55

Temporary Employment of H–2A Aliens in the United States

AGENCY: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule; suspension of rule.

SUMMARY: The Department of Labor (DOL or the Department) is suspending the H–2A Final Rule published on December 18, 2008 and in effect as of January 17, 2009. That Final Rule amended the regulations governing the certification for temporary employment of nonimmigrant workers in agricultural occupations on a temporary or seasonal basis, and the enforcement of contractual obligations applicable to employers of such nonimmigrant workers. To ensure continued functioning of the H–2A program, the Department is republishing and reinstating the regulations in place on January 16, 2009 for a period of 9 months, after which the Department will either have engaged in further rulemaking or lift the suspension.

DATES: Effective June 29, 2009.

FOR FURTHER INFORMATION CONTACT: For further information regarding 20 CFR part 655, contact William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. For further information regarding 29 CFR parts 501, 780 and 788, contact James Kessler, Branch Chief, Farm Labor Enforcement, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0070 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

The H–2A visa program provides a means for U.S. agricultural employers to employ foreign workers on a temporary basis to perform agricultural labor or services when U.S. labor is in short supply. Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (INA or the Act) (8 U.S.C. 1101(a)(15)(H)(ii)(a)) defines an H–2A worker as a nonimmigrant admitted to the U.S. on a temporary or seasonal basis to perform agricultural labor or services. Section 214(c)(1) of the INA (8 U.S.C. 1184(c)(1)) mandates that the Secretary of the Department of Homeland Security (DHS) consult with the Secretary of the Department of Labor (the Secretary) with respect to the adjudication of H–2A petitions, and, by cross-referencing Section 218 of the INA (8 U.S.C. 1188), with respect to determining the availability of U.S. workers and the effect on wages and working conditions. Section 218 also provides further details of the H–2A application process and the requirements to be met by the agricultural employer.

The Department's regulations at 20 CFR part 655, subpart B—''Labor Certification Process for Temporary Agricultural Employment Occupations in the United States (H–2A Workers),'' govern the H–2A labor certification process. The Department's regulations at 29 CFR part 501 implement its enforcement responsibilities under the H–2A program. The Department's regulations on Fair Labor Standards Act (FLSA) exemptions applicable to agriculture, processing of agricultural commodities, and related subjects under the FLSA at 29 CFR part 780, and the Department's regulations on FLSA exemptions applicable to forestry and logging operations at 29 CFR part 788, set forth the Department's interpretation of the FLSA provisions relating to agriculture, forestry, and logging.

On December 18, 2008, the Department published a Final Rule revising title 20 of the Code of Federal Regulations (20 CFR) part 655 and title 29 of the Code of Federal Regulations (29 CFR) parts 501, 780, and 788 (the December 2008 Rule or Final Rule). See 73 FR 77110, Dec. 18, 2008. The December 2008 Rule replaced the previous versions of 20 CFR part 655 (2008) and 29 CFR part 501 (2008) that, for the most part, were first published at 52 FR 20507, Jun. 1, 1987. With respect to the provisions under 29 CFR parts 780 and 788 that were amended by the December 2008 Rule, the previous versions of 29 CFR 780.115, 780.201, 780.205, and 780.208 were published at 37 FR 12084, Jun. 17, 1972, and the previous version of 29 CFR 788.10 was published at 34 FR 15784, Oct. 14, 1969.

Following the issuance of the December 2008 Rule, United Farm Workers and others filed a lawsuit in the U.S. District Court for the District of Columbia on January 12, 2009 challenging the December 2008 Rule. *United Farm Workers, et al.* v. *Chao, et al.,* Civil No. 09–00062 RMU (D.D.C.). The plaintiffs asserted that in promulgating the December 2008 Rule, the Department violated section 218 of the Immigration and Nationality Act as well as the Administrative Procedure Act. The plaintiffs requested a temporary restraining order and preliminary injunction, along with a permanent injunction that would prohibit DOL from implementing the December 2008 Rule. On January 15, 2009, Judge Ricardo M. Urbina denied the plaintiffs' request for a temporary restraining order and preliminary injunction on the basis that the plaintiffs failed to show ''likely, imminent and irreparable harm;'' the court did not address the merits of the case or whether the plaintiffs demonstrated the substantial likelihood of success on the merits. Accordingly, the December 2008 Rule went into effect as scheduled on January 17, 2009.

As the Department began implementing the December 2008 Rule, it immediately encountered a number of operational challenges which continue to prevent the full, effective and efficient implementation of the December 2008 regulation. The Department also has realized that the implementation of the December 2008 Rule without further consideration of the relevant legal and economic concerns that have arisen since its publication was proving to be disruptive and confusing not only to the Department's administration of the H–2A program but also to State Workforce Agencies (SWAs), agricultural employers, and domestic and foreign workers, especially in light of the severe economic conditions facing the country. Furthermore, the development of the December 2008 Rule was based in part on the policy positions of the prior Administration with which the current Administration may differ and wish to reconsider, especially in light of changed economic conditions. This is particularly true with respect to the changes to wages paid to H–2A workers wrought by the shift of the Adverse

Effect Wage Rate (AEWR) from the wage rates based on data compiled by the U.S. Department of Agriculture (USDA) to those calculated on data from the Bureau of Labor Statistics in its Occupational Employment Statistical Survey (OES). This reconsideration may result in new rulemaking to seek additional comment from affected users and other interested parties. In light of the potential for new rulemaking, the Department believes it would not be an efficient use of limited agency resources, appropriated from taxpayer funds, to continue to attempt to operationalize the December 2008 Rule, and that it would be disruptive and confusing for program users and the Department to engage in the steps necessary to make the current rule fully operational.

For these reasons, on March 17, 2009 the Department published a Notice of Proposed Suspension of Rule (the Notice), which proposed to suspend the December 2008 Rule for 9 months and reinstate on an interim basis the prior H–2A regulation in effect on January 16, 2009 (the Prior Rule). 74 F.R. 11408 (March 17, 2009). The suspension of the December 2008 Rule and temporary reinstatement of the Prior Rule will allow the Department to review the December 2008 Rule to ensure that it effectively carries out the statutory objectives and requirements of the program in a manner that minimizes disruption to the Department, SWAs, employers, and workers by temporarily reinstating prior regulations which had been in effect for over 20 years and with which the agricultural community already is familiar.

II. Comments on the Proposal and the Department's Responses and Decision

The Department received over 800 comments in response to the publication of the Notice of Proposed Suspension of Rule (the Notice). The majority of the comments were based on form letters raising similar issues and concerns. Commenters included individual farmers and associations of farmers, farm bureaus, law firms, farmworker advocates, State agencies (including SWAs), Members of Congress, and individual members of the public. The Department has reviewed the comments and taken them into consideration in drafting this Final Suspension Rule (Final Rule, or Final Suspension).

The Department received several comments through means beyond those listed in the Notice or after the comment period closed. In fairness to all parties, these comments were not reviewed in the consideration of the Final Rule. In addition, in the Notice, the Department requested that parties limit their comments to the issue of whether the Department should suspend the December 2008 Rule for further review and consideration of the issues that have arisen since the December 2008 Rule's publication. Though all comments have been reviewed, only those comments responding to issues on which the Department sought comment were considered in this Final Rule.

A. Comments Regarding the Stated Policy Rationale for Suspension

1. The Department's Problems in Implementing the December 2008 Rule Have Resulted in Confusion, Processing Delays and Program Disruption

a. Lack of Resources

The Department received a number of comments, both supporting and opposing a suspension, responding to the suggestion that both the Department and the SWAs lack resources to fully implement and administer the current regulations. Some commenters indicated support for the Department's position that the December 2008 rule should be suspended due to the shortage in resources available for fully implementing and administering that rule past the transition period. Conversely, a substantial number of comments called into question the substance of the rationale, arguing that the Department failed to present concrete evidence of a lack of resources to fully implement the December 2008 rule. The majority of comments that discussed the lack of resources to operationalize the program as written in the December 2008 Rule argued that the Department presented insufficient evidence and only relatively vague statements with no clear supporting evidence. Other commenters asserted that the new program *is* in fact already operational and has been for more than two months and is working just as the DOL said it would in the December 2008 Rule. One commenter pointed to some evidence believed to contradict the Department's claims of insufficient resources, citing the DOL's discretionary budget for the Fiscal Year 2009 being more than $17.5 billion, constituting a nearly 50% increase over Fiscal Year 2008 levels, and indicating that the growing trend is likely to continue with the President's budget for Fiscal Year (FY) 2010 which includes further increases for the Department.

The Department's FY 2009 budget is irrelevant to the Department's ability to implement the December 2008 Rule when it was promulgated. The December 2008 rulemaking was commenced and conducted without regard to resources required by the Employment and Training Administration (ETA) generally or for Office of Foreign Labor Certification (OFLC) specifically to implement the changed processes and the potential increased use of the program. The Department has determined that the agency's mandate is advanced by evaluating the December 2008 Rule, as opposed to bringing a potentially flawed program into full operation. The suspension will allow the Department to focus its resources in a more efficient manner, and will result in a more thorough determination regarding the best direction for the H–2A program.

A few commenters asserted that the Department's claims of resource shortfalls are suspect in light of having engaged in the perceived costly exercise of suspending the December 2008 Rule and reinstating the old regulations that will presumably require more work on the part of the Department and the SWAs. Other commenters asserted that complaints of funding shortfalls have been prevalent in the State and local DOL offices long before the current regulations were implemented. A handful of commenters argued that the attestation process under the current regulations and related SWA relief from certain housing inspection obligations lessened demand on DOL resources, thus undermining the Department's argument of budgetary shortfalls. One commenter indicated that DOL failed to provide evidence about the new role of the SWAs under the current regulations, arguing that SWAs have less to do under the current regulations than before and therefore should require the same or lesser amount of resources.

The Department's statutory obligations, especially many of those it delegates to the SWAs, have not changed regardless of the set of regulations under which they operate. The process of filing an application for H–2A workers under either set of regulations still begins with the placement of an agricultural order into clearance with the SWA having jurisdiction over the work, and continues through the State-assisted referral process and the mandatory housing inspection.[1] SWAs retain many

[1] The commenters' suggestion that SWAs are no longer required to perform housing inspections under the December 2008 Rule is simply inaccurate; the fact that, in some exigent circumstances, the Department will not withhold a certification for lack of an inspection does not relieve the SWA of its responsibility to perform the statutorily required inspection. The December 2008 Rule is clear that the SWAs are still expected to perform preoccupancy housing inspections.

of the same responsibilities under the December 2008 Rule as they did under the prior rule.

b. Inability To Implement Sequence of Operational Events

In the Notice of Proposed Suspension, the Department cited as crucial to the proposed suspension its inability to implement the sequence of operational events required to avoid confusion and processing delays, including implementing an automated review system, and training program users and SWA staff. One commenter supporting this rationale for the suspension indicated that the December 2008 regulations compound the application processing problem with guaranteed delays in temporary programs—mainly H–2A and H–2B—by creating an additional burden in increased supervised recruitment, as well as increased demands from the PERM program. Since its effective date, the Department has seen a steady increase in the numbers of delayed applications, where compliance with the statutory processing times has not been met. (See below section II.A.1.c. Processing Delays.) Delayed applications can translate into delayed petitions for nonimmigrant workers, delayed entries by needed workers, and—for lack of workers—delayed activities by farms and farming operations. The Department is concerned with the correlation between this increasing delay in the Department's meeting of its statutory mandate. The suspension is intended to allow the Department to work with a system with which it is familiar while it determines whether to retain the new system or engage in new rulemaking. Using a system with which the Department is familiar and which it has the infrastructure to implement will hopefully reduce processing times and enable the Department to more closely meet its statutory processing obligations.

Some commenters argued that all new rules require staff training, new materials and programs, but that issues arising during the implementation period may not be permanent and should not derail a lawfully promulgated rule. The Department readily recognizes that new regulations undergo necessary implementation phases and that alone is not a reason to suspend a rule, even where (as here) the office is promulgating significant changes for the first time in over 20 years that create considerable need for re-training staff and establishing of new guidelines for adjudication, new policy interpretations, etc. However, here the extremely narrow window between the publication and the effective date of the current regulations, especially since it occurred during the Presidential transition period, simply provided too little time for the Department to adequately train both staff and users in the basics of the program, much less the many nuances in program administration. Thus, absent a suspension, an untenable situation has developed in which the newly promulgated H–2A program has not been effectively implemented, putting users and adjudicators alike at a substantive disadvantage.

A number of comments focused on the Department's statement of need for an automated processing system and asserted that the December 2008 H–2A program is less resource intensive than the old program which had no automated system, and is therefore less in need of such a system. Other commenters pointed out that the prior H–2A program never had an automated processing system due to its complexity. Another commenter said that the Department never promised an automated system nor was the regulated community expecting one, and that in its experience, the processing times have been faster under the new program. Still other commenters pointed out that reverting to the old program, with its duplicative filing and requirements for manual processing, will not result in shorter processing times.

In the December 2008 Rule, the Department noted that an automated system was contemplated at some future time for the public. However, the Department's inability to create an internal automated system for tracking and processing of applications, not an external one, is the most substantial factor with which the Department is currently concerned. In a time in which the Department receives thousands of H–2A applications, an automated system geared to the relevant format and information collection is a necessity for the 21st century. Core program processing requirements—such as the calculation of statutory processing dates from date of receipt—require some electronic ability for collection and calculation. The current system, designed to a now-obsolete information collection of two pages (compared to the current 10 page collection), is simply inadequate to track the increased information required under the December 2008 regulations—information that, under an attestation-based collection, is critical for analysis to determine compliance with program requirements. Use of the current system to administer the December 2008 Rule will adversely impact program integrity. The Department notes, for example, that an inability to systematically track information that would enable it to conduct audits of certified applications and undertake actions resulting from audits means that the Department cannot effectively implement that part of the new system. This lack of functionality creates a significant inability to adequately address the procedures and systems necessary to implement an attestation-based system.[2] Furthermore, the ability to capture particular data elements from employers' applications as a basis for determining how to allocate audit resources was fundamental to the design of the December 2008 Rule. As discussed in the preamble to the December 2008 Rule, the Department envisioned a robust audit system that monitored filings under the re-engineered attestation-based process to ensure that the employment of H–2A workers does not adversely affect the wages and working conditions of similarly employed U.S. workers. Without such a system, the potential for fraud is increased, program integrity is in jeopardy, and U.S. workers are at risk of adverse affect.

In response to the Department's statements about its inability to provide sufficient training for SWAs and stakeholders on the December 2008 regulations, a number of commenters indicated that trainings were conducted in Denver and Atlanta in advance of the effective date of the regulations. In addition, several commenters asserted that DOL conducted more than one training for both SWA staff and employers prior to the effective date of the regulations and noted that this was the first time DOL presented training on the December 2008 Rule to the user community.[3] Another commenter indicated that extensive training was conducted and materials were provided at no charge to stakeholders and had been available in PDF on DOL's Web site.

The Department made attempts to educate both stakeholders and SWAs as well as its own staff, holding not only

[2] In addition, the Department has not yet created a fillable form, compelling employers to print the form and type or hand-write the information being collected.

[3] This is in fact incorrect, even if relevant; even in recent years the Department has engaged in significant outreach to its user communities in foreign labor programs. See, e.g., Announcement of Public briefings on the H–2B Temporary Non-agricultural Worker Labor Certification Program, 72 FR 17940 (Apr. 10, 2007); Announcement of Public Briefings on Using Redesigned Labor Certification Forms and Stakeholder Meeting, 74 FR 2634 (Jan. 15, 2009).

briefing sessions for the public (in which some SWA staff participated) but also for SWAs, limiting the latter to the transition procedures. However, the December 2008 Rule, published during the middle of a Presidential transition period, became effective only 30 days after the publication, as noted above. This gave both internal and external users little time to understand, implement, and adapt to the changes contained in the December 2008 Rule. Most significantly, the Department had little opportunity, prior to the effective date of the rule, to provide adequate assistance to the affected communities on both sides of the application process.

c. Processing Delays

In its March 17, 2009 Notice of Proposed Suspension, the Department pointed to delays and corresponding disruption to the program in the middle of the growing season as a core reason for temporarily suspending the current regulations pending additional review.

Most comments received in response to this statement disagreed with the Department's assertion that it had experienced processing delays. Many commenters complained that the Department failed to offer specific, detailed and concrete evidence demonstrating the nature and extent of the processing delays. Large growers associations cited contrary experience, indicating either fewer delays under the current regulations than in the past, or timely processing of applications. However, several commenters along with a substantial number of other program users expressed a great deal of frustration with the Department for failing to meet their need for extensive technical assistance, as well as a general lack of comprehension of the December 2008 Rule.

One commenter stated that DOL staff has done a good job implementing the current regulations on the operational level, despite complaints of inadequate staff, improper infrastructure and archaic computer support. Others commenters noted that employers have experienced fewer delays under the new regulations despite the fact that the H–2A program has always been understaffed.

Despite the anecdotal experiences of individual commenters, the ability of the Chicago National Processing Center (CNPC) to issue timely case decisions under the new H–2A regulations has decreased. Timely case decisions (in which an acceptance/modification letter is issued no later than 7 days of receipt of the H–2A application and/or a final determination no later than 30 days before the employer's date of need) have decreased as a percentage of H–2A applications adjudicated in any given week. While the percentage of delayed cases—cases outside the statutory timeframes for adjudication—has varied since the effective date of the current rule, it has not fallen below 27% of all cases in process at that time, and has been as high as 58%. The median days processing time for 2009 has also exceeded the times in 2008; in February 2009, the median number of days to process a case was 27 days (compared to 23 days for the same time period in 2008). In March 2009, the median number of days to process a case was 25, compared to 23 days in March 2008. In summary, the number of days from case receipt to adjudication has increased, as has the Department's percentage of delayed cases. Therefore, despite the December 2008 rule's intended purpose, that rule is at least one factor in the increases in the time in which applications have been handled, which has led to increased delays in application processing.

While the increased processing times may seem modest, they are cause for concern to the Department. In a statutory processing timeframe in which applications are filed only 45 days prior to the date of need and must be adjudicated no later than 30 days prior to date of need, delays of even a few days signal a significant failure by the Department to meet its statutory timeframes. One of the Department's goals in seeking to streamline the processing of H–2A applications was to ensure timely processing of applications—which was already a concern for the Department. Not only has that goal not been achieved, the new processing model has, at least so far, pushed that goal farther away. The processing delays also highlight the Department's ever-increasing inability to adequately perform its functions under the December 2008 Rule. This is particularly worrisome considering that the Department has seen its number of H–2A applications actually decrease compared to the same time span last year, with the Department receiving only 706 H–2A applications in February 2009, compared to 930 applications it received during the same month last year. Due to this demonstrated trend, the Department foresees increased difficulties in meeting its statutory processing times if the H–2A program experiences its anticipated increase in future participation. Delays in the Department's processing times mean that DHS and the Department of State have less time to process visa petitions, grant visas and admit workers before the employer's date of need. While there is no evidence that the current delays have caused harm, if the delays continue to increase, as it appears likely that they will, at some point the harm will become very real.

Though most commenters did not address the effect of additional demands on the Department to process incoming applications, one large growers' association opposed to the suspension noted that the existing DOL-reported delays will be increased by a suspension, resulting in unacceptable delays and gridlock for H–2A and H–2B employers for the majority of applications scheduled to be filed in April through June 2009.

The Department disagrees that a suspension will exacerbate the current delays in processing program applications. The process for filing and handling applications during the suspension will be the filing procedures of the former rule with which CNPC and SWA staff and all previous program users are familiar. The burden of review during a suspension will be shared by SWAs and the CNPC. As a consequence, processing times should decrease with the reinstatement of the former rule.

d. Confusion and Disruption Under the Procedures of the December 2008 Rule

The Department said in its March 17, 2009 Notice of Proposed Suspension that there is increasing evidence that continuing to implement the December 2008 regulations in light of existing experience and before additional examination is disruptive and confusing to the Department's administration of H–2A program, SWAs, agricultural employers and domestic and foreign workers.

The Department received several comments supporting the suspension because of this confusion and ensuing disruption. One commenter noted that the regulations should be suspended because they have caused confusion among employers, State Workforce Agency staff and workers. Another commenter cited anecdotal evidence of policy confusion and contradictions on the local level requiring a certain group of employers to pay overtime wages contrary to the current regulations, although this commenter generally opposed suspension of the 2008 rule on this basis. Another commenter, writing on behalf of a State Workforce Agency, indicated that confusion is already manifest in the processing of job orders during the transition period. Yet another commenter provided examples of confusion prevalent in communications between the SWA and the CNPC on such issues as the timing of receipt of

job orders from the CNPC, the use of master applications, and the timely identification of traditional labor supply States.

Another commenter indicated that SWAs are currently receiving insufficient support from the CNPC for dealing with pre-filing issues, such as rejection of qualified U.S. workers. Confusion also exists about the timing of housing inspections which are being conducted under two sets of differing regulations. The same commenter provided additional evidence of confusion and disruption, including the presence of anomalies in wage rates, which have caused the issuance of wage rate determinations that are occasionally lower than the State minimum wage rate; and also, instances where an SWA was instructed to make referrals to non-provider and non-traditional labor supply states, which in turn reduced the chances of getting U.S. workers to fill the positions.

The Department received other comments which challenged its assertions about the confusion and disruption caused by the current regulations. The most common objection from the commenters challenged the very existence of confusion and disruption under the December 2008 regulations, and noted that DOL did not specify in the Notice of Proposed Suspension the types of confusion and disruption experienced in administering the program or present examples. In addition, a large number of commenters argued that employers and the larger regulated community were not experiencing confusion. At least one commenter added that DOL would create confusion and disruption by suspending the regulations. One large grower association identified DOL as the source of confusion and disruption and accused the Department of limiting access to guidance, training and informational resources, and neglecting to fulfill its obligations in advising the regulated community on the current regulations.

The majority of commenters opposed to the suspension posited that there is no disruption among users resulting from the relevant legal and economic concerns associated with the December 2008 Rule. One commenter indicated that the current H–2A program is different from the prior regulatory regime in form and substance but the changes do not constitute such a fundamental shift in the Department's obligations, given the long lead time before the rule's promulgation to warrant a precipitous change in direction. One association noted that the largest users of the current H–2A program reported that the December 2008 regulations have made for a more logical, predictable, reliable and less disruptive approach to securing legal labor than the old regulations.

While each commenter's experience may be different, the Department disagrees with those commenters that there has been no disruption or confusion resulting from the new regulations. That the Department did not spell out in detail the specifics of the confusion experienced by program users, but only summarized the level of confusion and suggested it was sufficient to propose suspending the rule, does not negate the existence or lessen the impact of such confusion. Indeed, the Department received over 200 e-mail inquiries seeking clarification of the December 2008 regulations during the 3 months that a special mailbox was open to the public.

Moreover, the inquiries that the Department has received show the general lack of understanding and knowledge among employers with the process implemented by the December 2008 Rule. As noted above, the Department did conduct two briefing sessions for the public in December 2008 just before the publication of the December 2008 Rule, which fewer than 200 H–2A employers, agents, attorneys, farmworker advocates, State Workforce Agency employees, and others were able to attend. The attendees were provided an advance (draft) copy of the rule text at the meeting, and were provided a brief overview of the new regulations to be issued by DOL, (by both ETA and ESA). The Department of Homeland Security, which issued its own H–2A regulations at the same time, also participated in both briefings. These two briefings, however, did not even begin to respond to the questions and concerns arising from the new rule. Moreover, because of the resource constraints discussed earlier and the change in administrations and priorities, the Department has not been able to individually address the subsequent comments and questions nor provide adequate general program guidance.

After that briefing, the Department has received, between late December and early March, at least 250 written inquiries from program users on the basic program requirements. Some of these questions, both simple and complex, have come from some of the same commenters who now say they have seen no difficulties with the new rule. While a few questions demonstrated an understanding of the new rule, many others demonstrated complete confusion with the new regulatory requirements, the forms, or the process in general. The following are some of the questions received by the Department as recently as March 2009 which show a fundamental lack of understanding of the new rule:

> ''Do I advertise before I send in the application and do I send copies of this advertising?''
>
> ''To confirm, does form 9142 take the place of both form 750 and 790 in the new H–2A certification processing?''
>
> ''Does employer have to place a job order with SWA before filing the application with DOL? Is there any wait time?''

These questions evidence confusion about the basic program requirements and employers' obligations under the December 2008 regulations.

In addition, many more questions were directed to the individual SWAs, which at times over the past few months have provided contradictory or misinformed guidance (as noted by some commenters), in large part due to the SWA staff's own lack of understanding of the December 2008 rule. The Department has become aware, for example, that at least one SWA, a full month into the program, was erroneously giving out incorrect wage rates, which were directly contrary to the requirements of the new regulations. Another SWA asked the Department, as recently as April 2009, whether, on an application filed under the December 2008 Rule, it was required to refer, and the employer required to accept, referrals through 50 percent of the contract period (the ''50 percent rule'' of the former regulations), not the 30 days post-date of need as required under the December 2008 Rule.

SWAs still have a significant role under the December 2008 regulation, so their fundamental misunderstanding of the essential elements of the new regulation threatens program integrity and contributes to the public's continued confusion about the H–2A application process and corresponding employer obligations.

The most telling evidence of confusion among the farming employer community, however, lies in the number of applications the Department has received that require modifications in order to be made acceptable for processing. In the first three months of the program, January, February and March 2009, the Department found that 50%, 56%, and 46% of the applications processed in those months, respectively, required modifications to the applications. For the same timeframe last year, the percentages of applications requiring modifications were 10%, 16%, and 26%, respectively. This severe disparity of modifications of everything

from minimum requirements to contract issues demonstrates how little knowledge of the new regulations even seasoned users of the program have been able to glean.

Based on the volume and nature of the inquiries that the Department has received in the early days of the December 2008 Rule, as well as the number of applications that require further investigation, the Department disagrees that there is no confusion. The significant lack of understanding of the new rule is evident from the questions the Department continues to receive daily from even seasoned program users, and is of deep concern to the Department. Even if some members of the regulated community understand the current implementation of the new rule sufficiently for compliance purposes, there remains the fact that the December 2008 rule is not yet fully implemented, as the Department is still operating the program within the transition procedures prior to full Final Rule implementation.

2. Avoiding the Disruption of Fully Implementing a Complex Regulatory Scheme When Further Review of Policy and Economic Concerns Are Warranted

In the March 17 Notice, the Department identified as a factor in considering whether to suspend the current regulations the disruptive effect of implementing a complex regulatory scheme without further consideration of the legal and economic concerns that have arisen during the current economic downturn, such as the rising unemployment among U.S. workers and the impact that may have on the Department's H–2A statutory obligation to ensure no adverse effect on the U.S. worker population from the introduction of the foreign workforce. Although the Department received many comments opposing this basis for suspending the regulations, the Department also received several comments strongly supporting the proposed action.

One commenter asserted that the current regulations should be suspended because of the change in economic circumstances which has taken place since the promulgation of the December 2008 Rule, including the increased unemployment that is having an effect on the availability of U.S. workers. Another commenter on the State level noted that unemployment has increased nationally and in its State in a way not anticipated during the rulemaking process for the December 2008 Rule. The commenter urged that the Department must have an opportunity to reconsider policy implications of the H–2A program overall, particularly those program components that are likely to have an adverse impact on the U.S. workforce in the changed economic circumstances.

Another commenter indicated that DOL did not provide supporting evidence showing that the delay in implementation of the December 2008 regulations will cause disruption in the agricultural sales, production and market conditions, even in this unstable economic environment. This commenter went on to assert that DOL's proposed suspension will drive up costs and force users out of the program and negatively impact supporting jobs in the greater economy, thus itself generating a disruptive economic impact. Another commenter noted that DOL's mandate is not to abate the effects of increased unemployment but to protect workers, which it is adequately doing under the current regulations.

The commenter's objection to the proposed suspension based on the purported increase in employers' expenses due to an increase in required wage rates is a critical reason the Department needs to examine and re-evaluate the wage regime instituted under the December 2008 Rule. One of the Department's most important functions in its administration of the H–2A program is to ensure that admission of H–2A workers does not adversely affect the wages of U.S. workers. At all times, but particularly in the midst of a severe economic downturn, the Department is required to ensure that its regulations do not create or compound an adverse effect on U.S. workers. This is particularly the case where, as in the H–2A program, the Department has a statutory obligation to ensure protection of U.S. agricultural workers, one of the most vulnerable sectors of the workforce.[4] The many commenters who cite increased wages as a central reason for not suspending the December 2008 Rule are doing so on the grounds that wage costs for their foreign workforce under the former regulations will be higher than under the December 2008 Rule. One of the primary reasons that the new Administration wants to review the December 2008 Rule is precisely to determine whether the generally reduced wage rates under that rule are having a depressive effect on farmworker wages.

The Department stated in its Notice of Proposed Suspension that the December 2008 Rule, and the policy positions from which the rule was promulgated, may need to be reconsidered given the efforts being made by the current Administration to stabilize the economy. A majority of commenters criticized the Department for considering a change in the regulations on policy grounds. Some of these commenters asserted that even if the current Administration does not agree with the policies represented by the December 2008 Rule, the December 2008 Rule was carefully considered, planned and prepared over a long period of time and underwent a significant amount of review. Others noted that the December 2008 Rule was legally promulgated and should not be ''scrapped'' without the Department first undertaking a similarly painstaking new rulemaking process.

The Department also received comments supporting its desire to revisit the policies of the previous Administration reflected in the December 2008 Rule in light of the goals and objectives of the current Administration. One such commenter argued that it would be an inefficient use of limited agency resources, as well as confusing and disruptive to the program users, to engage in the full implementation of the December 2008 Rule if the Department is likely to issue a different rule soon. This commenter felt the suspension would be less disruptive and confusing than continuation of the December 2008 rule.

The Department agrees that it is not appropriate to fully implement a rule that is under reexamination by the current Administration. The Administration has, through the suspension, taken the first step to begin a review of the regulatory policies of the previous Administration reflected in the December 2008 Rule in light of its own policies.

The Department also agrees with those commenters who feel that less disruption will follow from a suspension than from a continuation of the December 2008 Rule. The Administration is not at this time eliminating the rulemaking of the previous Administration; rather, it is temporarily putting that rulemaking on hold in order to review the policies in that rulemaking and, if warranted, reopen the issues contained in the H–2A program for further notice and comment. The suspension is of limited duration in both effect and time; by providing notice and an end date, the Department is limiting the impact of the suspension as much as is feasible while

[4] There is little dispute among commenters with the Department's position that farm hires are disadvantaged in the labor market relative to most other U.S. wage and salary workers. U.S. Department of Agriculture, ''Profile of Hired Farmworkers, A 2008 Update,'' Economic Research Report, No. 60, July 2008, page iii.

still enabling the review the Administration believes is necessary. The December 2008 Rule is not now being ''scrapped'' but is being temporarily suspended in order for the Administration to undertake what it considers to be an essential review.

B. Impetus for the Timing of Suspension

The March 17 Notice of Proposed Suspension stresses the importance of moving swiftly with the suspension in order to avoid confusion and disruption of the H–2A program in the midst of the growing season.

One group of farmworker advocate organizations offered support for the immediate implementation of a suspension, arguing that the regulations must be suspended before the end of the transition period of the current regulations to avoid compounded confusion and disruptions in application processing due to the Department's inability to fully and properly implement the complex new regulatory program. Other comments supported this position, noting that if there is a likelihood that a new program will be designed and the December 2008 Rule changed, the December 2008 Rule should be suspended immediately in order to prevent confusion and disruption.

Most commenters, however, criticized the Department's timing of the suspension, indicating that it would be disruptive during the critical time for crop production. The commenters argued that the suspension overlapping with the growing season will hurt the employers who have already planned and calculated their costs on the basis of the current regulations.

As discussed further below, however, the Department has clearly indicated its intent to apply the current regulations to all applications filed prior to the effective date of this Final Rule. Since most applications for this growing season have been filed or will have been filed before this Final Rule becomes effective, the Department does not believe that the concerns about disruption for this season are a major concern. For additional discussion, see Section III. infra.

C. The Department's Authority To Suspend the December 2008 Rule

A number of commenters objected to the proposed suspension of the December 2008 Rule because the Department's rulemaking process for the proposed suspension was not in compliance with the Administrative Procedure Act (APA). There appeared to be differing views among the commenters on the conformity of the Notice of Proposed Suspension with the rulemaking requirements under the APA. Accordingly, the Department reiterates the key facts relating to the rulemaking process undertaken thus far. On March 17, 2009, the Department published its Notice of Proposed Suspension in the **Federal Register**. The Notice proposed to suspend the December 2008 Rule for nine months and to reinstate the Prior Rule. The Notice requested comments relating solely to the proposed suspension itself (*i.e.*, not the substance or merits of either rule) from the public through March 27, 2009. The publication of the Notice of Proposed Suspension did not in any way result in the immediate suspension of the December 2008 Rule. Rather, the Department accepted comments from the public during the ten-day period between March 17, 2009 and March 27, 2009. Once the comment period closed, the Department reviewed and considered the comments that it received from the public and, through this Final Rule, is suspending the December 2008 Rule and reinstating the Prior Rule for 9 months. The suspension of the December 2008 Rule and reinstatement of the Prior Rule will not take effect until 30 days after the date of this Final Rule's publication.

These facts are significant with respect to various comments that the Department's actions during this rulemaking process are a violation of the APA. Because different actions are cited by the commenters as bases of the asserted APA violation, we address each action separately.

1. 10-Day Comment Period

A number of commenters argued that the 10-day comment period provided in the Notice of Proposed Suspension was unreasonable and violated the APA. Commenters claimed that many farmers were in the midst of their growing season, and 10 days was too short of a period to provide a sufficient response to the notice. Rather, these commenters stated that an adequate comment period required at least 30 days. Additionally, some commenters cited the apparent discrepancy between the 10-day comment period for the proposed suspension and the 60-day comment period for the Department's rulemaking process for the December 2008 Rule. Accordingly, there were many requests to extend the comment period up to 60–90 days.

Section 553 of the APA plainly states:

> (b) General notice of proposed rule making shall be published in the **Federal Register**, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include:
>
> a statement of time, place, and nature of public rule making proceedings;
>
> reference to the legal authority under which the rule is proposed; and
>
> either the terms or substance of the proposed rule or a description of the subjects and issues involved.
>
> * * * * *
>
> (c) After notice required by this section, * * * the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis or purpose.

An agency is only required to provide a ''meaningful opportunity'' for comments on a proposed rule, which means that an agency's mind must be open to considering them. See *Grand Canyon Air Tour Coalition* v. *FAA*, 154 F.3d 455 (D.C. Cir. 1998). Nowhere does the APA set forth a minimum time period for accepting rulemaking comments. In fact, courts have upheld comment periods as short as seven days. See *Northwest Airlines, Inc.* v. *Goldschmidt*, 645 F.2d 1309 (8th Cir. 1981). Additionally, comment periods shorter than 30 days have been upheld where there was no evidence of any harm to the petitioners by the short comment period, as demonstrated by the volume and substance of comments received by the agency and the measurable effect such comments had on the final rule. See *Florida Power & Light Company* v. *U.S.*, 846 F.2d 765, 772 (D.C. Cir. 1988) (upholding 15-day comment period where 61 comments were received, ''some of them lengthy'') and *Omnipoint Corporation* v. *FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (upholding 15-day comment period where 45 comments and 42 letters were received).

Here, the Department received over 800 comments, many of which contained detailed analyses of the impact suspension would have on the participants in the H–2A program and which the Final Rule has addressed and taken into account. Given the absence of a required minimum comment period under the APA, the sheer volume and substance of the comments and the Department's detailed discussion and consideration of the comments in this Final Rule, the Department believes that the 10-day comment period for this rulemaking is reasonable. Furthermore, while the Department did provide a longer comment period during the 2008 H–2A rulemaking process, a shorter timeframe is warranted here given the

need for expediency as discussed earlier in this preamble and the much more limited scope of this suspension rulemaking.

2. Limitation of Scope of Comments to Suspension

An agricultural association objected to the Department's limitation of the scope of comments to the suspension itself, as opposed to comments on the merits or substance of either the current H–2A rule or its predecessor rule. The association stated that it has numerous comments it would like to offer on both the current regulations, as well as the prior regulations, and on this basis the association objected to the Department's reinstatement of the old regulations during the suspension period.

As the Notice of Proposed Suspension makes clear, the current Administration intends to review and evaluate the social and economic implications of the December 2008 Rule. The Department stated that if it were to decide to suspend the December 2008 Rule, the Department will either ''engage in further rulemaking or the suspension will be lifted after 9 months.'' Thus, comments on the merits of the existing and previous program would be appropriate when the merits of the program are actually at issue in that rulemaking. The suspension of the December 2008 Rule and reinstatement of the Prior Rule is strictly a temporary measure arising from the Department's need to review in an expeditious manner the December 2008 Rule to ensure that the Department effectively carries out the statutory objectives and requirements of the H–2A program. The December 2008 Rule has not been repealed; it will only be held in abeyance for nine months. Unless the Department engages in further rulemaking, about which comments on the substance and merits of the proposed regulation will be solicited, the December 2008 Rule will continue to remain in effect once the suspension expires after nine months.

3. Effective Date of Suspension

As mentioned earlier, there was some confusion among the commenters as to when the suspension would take effect. Some commenters believed that the suspension took effect upon publication of the Notice of Proposed Suspension or would take effect immediately at the close of the comment period. Another commenter believed that the suspension would take effect before April 1, 2009. Accordingly, a few commenters stated that the Department was required to show good cause in order for the suspension of the current H–2A rule to take effect immediately. However, the Department never stated in the Notice of Proposed Suspension, nor does it intend in this Final Rule, that the suspension would take effect immediately.

As explained earlier, neither the publication of the Notice of Proposed Suspension, nor the close of the comment period resulted in the immediate suspension of the December 2008 Rule. The Department never intended to issue, and in fact is not issuing, a Final Rule suspending the December 2008 Rule without having undertaken a substantive review and consideration of the comments that were submitted during the comment period. Part of this misunderstanding may be attributed to the Department's reference in its Notice of Proposed Suspension that ''if the suspension continues on April 1, 2009, the previous regulations that were in effect on April 1, 2008 would appear in the next published version of the CFR as 20 CFR 655.1 and 20 CFR part 655.'' The Department merely intended to track the publication schedule of the CFR, in which title 20 is updated annually as of April 1st. However, the Department acknowledges that the statement may have been thought to erroneously imply that the suspension would have been in effect before April 1, 2009, which was not the Department's intention. The Department would like to clarify that because the suspension did not take effect before April 1, 2009, this year's published version of the CFR as 20 CFR 655.1 and 20 CFR part 655 will contain the December 2008 Rule in effect as of April 1, 2009.

A farmworker advocacy organization expressed support for the suspension to take effect immediately upon publication of the Final Rule of suspension. However, while the circumstances described in this preamble warrant suspending the December 2008 Rule, the Department recognizes the need to have some period of adjustment to the Prior Rule, in light of the challenges associated with changing regulatory programs, as noted by many commenters. Accordingly, the Department has determined not to waive the 30-day delayed effective date requirement in Section 553(d) of the APA.

D. Impact of Suspension

The Department received many comments expressing concern about the impact of the suspension. The Department first would like to explain and clarify how the suspension of the current rule and reinstatement of the Prior Rule will take effect before addressing the particular concerns raised by commenters. The suspension will become effective 30 days after the date of publication of this Final Rule. The Department stated in its Notice of Proposed Suspension that ''[i]f a final decision is reached to suspend the H–2A Final Rule, any H–2A application for which pre-filing positive recruitment was initiated in accordance with the H–2A Final Rule prior to the date of suspension will continue to be governed by the H–2A Final Rule.'' This statement must be understood in the context of the Department's subsequent extension of the transition procedures.

On April 16, 2009, after the issuance of the Notice of Proposed Suspension, the Department published an Interim Final Rule (IFR) which extended the transition period under 20 CFR 655.102(b)(2) to cover all applications with a date of need on or before January 1, 2010. See 74 FR 17597. During the transition period employers do not engage in pre-filing recruitment in traditional or expected labor supply States in which there are a significant number of qualified domestic workers. Under the transition procedures, employers are provided information on expected labor supply States as part of their post-filing recruitment instructions. Given that all applications filed before the effective date of the suspension will still be subject to the transition provision at 20 CFR 655.102(b)(2), which provides for post-filing recruitment, no employers will be required to engage in pre-filing positive recruitment before the effective date of the suspension. Nevertheless, in keeping with the intent expressed in the Notice of Proposed Suspension, any H–2A application which is filed while the December 2008 Rule is still in effect will continue to be governed by the December 2008 Rule, while applications filed on or after the effective date of the suspension and the reinstatement of the Prior Rule will be governed by the Prior Rule.

Despite a recommendation from a farmworker advocacy organization to apply the Prior Rule to all pending and approved job orders, the Department does not believe there is a legal basis to do so, and therefore will not apply the Prior Rule to applications filed under the December 2008 Rule. Following the farmworker advocacy organization's suggestion would undermine employers' expectations and reliance on the current rule prior to its suspension. Moreover, implementing this suggestion may violate the prohibition on retroactive rulemaking. See *Nat'l Mining Ass'n* v. *Dep't of Labor,* 292 F.3d 849, 860 (D.C. Cir. 2002).

The reinstatement of the Prior Rule will be accompanied by the reinstatement of Form ETA–750 in the H–2A program. Form ETA–9142 for H–2A applications[5] may be filed up to the day before the effective date of the suspension. However, as of the effective date of this Final Rule, employers will be expected to use Form ETA–750, and any H–2A applications filed using the Form ETA–9142 will not be accepted.

1. Uncertainty of Applicable Regulations; Impact on Planning and Operations

A number of commenters expressed concerns about the confusion and disruption that would result from the suspension of the December 2008 Rule. In particular, a State agricultural agency questioned: (1) Whether farmers would be allowed to abandon applications when they learn that they are going to be subject to the Prior Rule; (2) whether it would be possible for farmers to end up with some workers being subject to the December 2008 Rule and some to the Prior Rule; (3) whether farmers will find that their applications filed under the December 2008 Rule are rejected once the Prior Rule is in place. Such concerns were echoed by a number of farmers and agricultural associations, particularly as to how the suspension would affect applications filed but not yet approved.

Employers always have had the ability to abandon or withdraw pending applications without penalty, regardless of which regulations apply. However, as explained above, the Department has clearly identified the time frame for determining whether an application falls under the December 2008 Rule or the Prior Rule. Applications filed before the effective date of this Final Rule will be governed by the December 2008 Rule. Applications filed on or after the effective date of this Final Rule will be governed by the Prior Rule. Thus, applications filed before the effective date of this Final Rule will not be governed by the Prior Rule and therefore, could not be rejected, nor will the employer be penalized, because the application is not in compliance with the Prior Rule.

The Department understands that one of the results of this suspension is that a farmer may have workers subject to two different sets of rules, depending on the date on which the applications covering the H–2A workers were filed. However, as discussed in greater detail in Section II(C)(3) of this preamble, such situations already occur and have not detrimentally affected the H–2A enforcement process.

A number of growers also raised concerns about having invested much time and effort in learning the December 2008 Rule, and that their reliance on the December 2008 Rule in planning for their 2009 growing season will cause them to incur additional administrative, operations, and financial burdens if the December 2008 Rule is suspended. In particular, one agricultural association stated that their members planned for their 2009 crop activities using the December 2008 Rule to budget for operating costs, secure financing, plan personnel needs, finalize contracts, and schedule product deliveries. They claimed that such changes mid-season would not only disrupt their operations, but could potentially put them out of business based on differences in compliance costs, particularly with respect to wages and transportation. One State department of agriculture claimed that the suspension would cause disruptions in the harvest due to an insufficient labor supply and create shortages of products in the marketplace which would raise food prices. Other commenters were concerned that the suspension would create a disincentive for employers to participate in the H–2A program and result in greater use of illegal labor and the outsourcing of food production.

The Department acknowledges that the suspension of the December 2008 Rule is a change that will inevitably result in some disruption from the status quo created by the December 2008 Rule. However, the Department does not believe that the disruption will rise to the damaging levels claimed by the commenters. First of all, the Prior Rule that will be reinstated through this Final Rule and which was replaced by the December 2008 Rule only 3 months ago had been in effect for over 20 years. Clearly, the agricultural industry did not grind to a halt during that period, and most of the current users under the H–2A program have a sufficient degree of familiarity and experience with the Prior Rule. Even though one agricultural association claimed that there was a wide consensus regarding the problems with the Prior Rule and that reverting back to it would be more disruptive than staying with the December 2008 Rule which has only a few perceived minor problems, the rulemaking record of the December 2008 Rule contradicts these points. The Department received over 11,000 comments in response to the NPRM for the December 2008 Rule, which addressed a diversity of issues in the H–2A program and evidenced a lack of consensus regarding the purported advantages of the December 2008 Rule. Additionally, as discussed earlier, applications which have been filed under the December 2008 Rule, and which represent most of the applications that will be filed for this growing season, will continue to be governed by the December 2008 Rule.

This Final Rule also suspends the December 2008 revisions to 29 CFR part 501, implementing the Department's enforcement of the H–2A program, as that regulation is so integrally intertwined into 20 CFR part 655, Subpart B that a suspension of the December 2008 rule must apply equally to both revised regulations.

2. Elimination of Certain Categories of Activities From the H–2A Program

A number of commenters expressed concern about the impact that the proposed suspension would have on certain categories of activities which were classified as ''agricultural'' under the December 2008 Rule, but which were not part of the H–2A program under the Prior Rule. While the Department acknowledges and understands that the suspension may affect growers conducting such activities more so than others, the Department has determined that for purposes of administrative efficiency and advancing consistency in application, the suspension will apply to the December 2008 Rule in its entirety. The particular concerns of the commenters are addressed in greater detail below.

a. Logging

The Department received a number of comments from logging contractors, employers related to the logging industry (*e.g.*, sawmills, land companies), and associations representing the logging industry. All of these commenters opposed the proposed suspension arguing that the suspension removes the only alternative source of labor for this industry for this year. The temporary suspension of the December 2008 Rule will remove logging from the definition of agricultural labor or services, and thus, employers seeking to hire temporary foreign labor will have to file applications under the non-agricultural H–2B program. The H–2B program is limited to 66,000 visas per year, with 33,000 being made available during each 6 month period of a fiscal year. The United States Citizenship and Immigration Service (USCIS) announced that the cap for the second half of Fiscal Year 2009 was reached on January 7,

[5] Note that the discontinuation of Form ETA–9142 in the H–2A program in no way affects the requirement to use the Form ETA–9142 in the H–2B program.

2009.[6] Therefore, petitions for new H–2B workers seeking employment start dates prior to October 1, 2009 would be rejected by USCIS. The commenters stated that the suspension would devastate the logging industry and harm the related forest products industries. Several of these commenters identified June 1, 2009 as the approximate beginning date of the upcoming summer harvest season.

The Department recognizes that the suspension will remove the ability of the logging industry to obtain workers via the H–2A program for the 9-month period the suspension is in effect. However, as stated earlier, any H–2A application which was filed under the December 2008 Rule prior to the effective date of the suspension will continue to be governed by the December 2008 Rule. The Department's experience in administering the labor certification processes for the temporary worker programs is that the most of the applications for job opportunities in the logging industry are received and processed during late winter or early spring. Therefore, the Department believes that the majority of applications for temporary employment in the logging industry will be processed prior to the effective date of this Final Rule and will be subject to the December 2008 Rule, as they will have been filed before its suspension takes effect. Even taking the industry's date of June 1, 2009 as the start of the logging season and thus as the beginning date of need, all applications for loggers (of which there are only annual applications for approximately 600 workers) are expected to be filed and processed prior to the effective date of this Final Rule.

b. Incidental Activity and Packing

Two U.S. Senators expressed concern that reinstating the Prior Rule would eliminate the expanded definition of agriculture under the December 2008 Rule which included: (1) Work typically performed on a farm and incidental to the agricultural labor or services for which the H–2A worker is sought, but not specifically listed on the Application for Temporary Employment Certification; and (2) packing shed operations that were not part of a farming operation, where fresh fruits and vegetables are packaged for sale after harvest.

Even though the definition of ''agricultural or labor services'' under the Prior Rule differs from that provided in the December 2008 Rule, the definition of ''agricultural or labor services'' under the Prior Rule still encompasses incidental work and packing shed operations. The Prior Rule, like the December 2008 Rule, incorporates the definitions of ''agricultural labor'' from Section 3121(g) of the Internal Revenue Code and ''agriculture'' from Section 3(f) of the Fair Labor Standards Act (FLSA) in the definition of ''agricultural or labor services.''

The definition of ''agriculture'' from Section 3(f) of the FLSA includes incidental work:

> (f) * * * farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities as defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm *as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.*

(emphasis added).

The definition of agriculture in the December 2008 Rule, however, also included in the definition of ''agricultural labor or services of a temporary or seasonal nature'' the following provision that specifically addressed incidental work beyond the definition of agriculture provided under Section 3(f) of the FLSA:

> Other work typically performed on a farm that is not specifically listed on the Application for Temporary Labor Certification and is minor (i.e., less than 20 percent of the total time worked on the job duties and activities that are listed on the Application for Temporary Employment Certification) and incidental to the agricultural labor or services for which the H–2A worker was sought.

20 CFR 655.100(d)(1)(vi).

Although reinstatement of the Prior Rule would eliminate this provision, the definition of agriculture under Section 3(f) of the FLSA is broad enough to encompass the work described in 20 CFR 655.100(d)(1)(vi). The definition of ''agricultural labor'' from section 3121(g) of the Internal Revenue Code includes packing shed operations by including all service performed:

> (4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

The definition of agriculture under the December 2008 Rule, however, also included in the definition of ''agricultural labor or services of a temporary or seasonal nature'' a provision that specifically addressed packing that goes beyond the definition of agricultural labor in Section 3121(g) of the Internal Revenue Code:

> Handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity while in the employ of the operator of a farm where no H–2B workers are employed to perform the same work at the same establishment.

20 CFR 655.100(d)(1)(v).

Although packing shed operations which were not part of the farming operation would no longer be included in the definition of agriculture once the Prior Rule is reinstated, the Department does not believe that the removal of such activities would unduly harm growers; in fact, the Department received no comments from any growers objecting to the suspension on that ground. Accordingly, while the Department recognizes the concerns raised by the commenters about the changes in definition of agricultural labor or services of a temporary or seasonal nature, the Department does not believe that such changes are so critical that they outweigh the benefits of suspending the December 2008 Rule.

3. Enforcement; Wage Discrimination

Many commenters expressed concern that suspending the December 2008 Rule and replacing it with the Prior Rule would subject workers performing the same work to different certifications, different regulatory requirements and different wages.

Such disparities already exist. Under the December 2008 Rule, for example, U.S. workers hired during the period of time set forth in the labor certification are entitled to H–2A wages as they are engaged in corresponding employment, while U.S. workers who were already in the employer's employ are not. Similarly, a grower may pay its own U.S. workers one wage and hire a labor contractor employing H–2A workers paid at a different wage, though both

[6] 6 USCIS Press Release, USCIS Reaches H–2B Cap for Second Half of Fiscal Year 2009. Available at: *http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b2b547dfb32be110VgnVCM1000004718190aRCRD&vgnextchannel=3381c0ed71f85110VgnVCM1000004718190aRCRD.*

sets of workers will be employed in the same fields performing the same work. Suspending the December 2008 Rule will allow for the reconsideration of the questions arising from these disparities.

4. Flaws in the Text of the Prior Regulation

An agricultural association noted that the reinstatement of the Prior Rule verbatim would include the reinstatement of certain errors in the regulation, such as a pre-McConnell Amendment reference to the granting of certifications no later than 20 days before the date of need. The Department acknowledges that the Prior Rule contains that error, but this error, along with other outdated references in the regulatory text, did not and will not prevent the Department from complying with its statutory requirements under the Immigration and Nationality Act and other laws.

E. Suspension of 29 CFR Part 501

As discussed above, 29 CFR part 501 implements the Department's enforcement responsibilities under the H–2A program. These regulations complement the ETA regulations at 20 CFR Part 655 Subpart B and are so integrated with the ETA regulations that the suspension of 20 CFR part 655 necessitates the suspension of 29 CFR part 501. This is evident in that in the comments received, commenters did not differentiate between the ETA and the WHD regulations.

F. Suspension of Pertinent Sections of 29 CFR Parts 780 and 788

As part of the H–2A rulemaking, the Fair Labor Standards Act (FLSA) regulations, 29 CFR 780.115, 780.201, 780.205, and 780.208, were amended to include the production of Christmas trees within the scope of ''agriculture'' under the FLSA and to remove specific reference to Christmas trees as part of forestry activities in 29 CFR 788.10. This classification of Christmas tree production impacts workers' entitlement to minimum wages and overtime pay, as well as the application of child labor protections under the FLSA.

As explained in the preamble to the December 2008 Rule, this provision was based on the decision in *U.S. Department of Labor* v. *North Carolina Growers Association*, 377 F.3d 345 (4th Cir. 2004), which held that production of Christmas trees was within the scope of the FLSA definition of agriculture at 29 U.S.C. 203(f), thus allowing application of exemptions pertaining to agriculture. 29 U.S.C. 213(a)(6)(A) and 29 U.S.C. 213(b)(12). That decision was contrary to regulations dating from the 1950s which included Christmas trees among ''other forestry products'' that were not included within the scope of FLSA agriculture. *See* 16 FR 481–482, Jan 28, 1950; 21 FR 2933, May 3, 1956.

Comments from growers and representatives of this industry opposed suspension of these FLSA revisions, pointing out that the treatment of Christmas tree production under the FLSA is unrelated to the changes made to the H–2A program, and that the Christmas tree regulation is not impacted by the programmatic concerns affecting the H–2A regulations.

The Department acknowledges that this change in FLSA regulations is unrelated to the H–2A program and was not necessary to accomplish the revisions to the H–2A program. Nevertheless, the Department believes that suspending these FLSA regulatory changes will provide an opportunity for additional review with an explicit focus on the ramifications of the rule on the implementation of the FLSA. For example, neither the NPRM nor the preamble to the December 2008 Rule mentioned the impact of the regulatory change on child labor protections in this industry. Accordingly, no comments were received, and no information was obtained, concerning the impact of this change on child labor protections. DOL is especially sensitive to potential adverse impacts that the December 2008 Rule's FLSA regulatory changes might have on our Nation's most vulnerable workers, including low-wage workers and youth.

Given the longstanding nature of the Department's prior position on this issue, and the removal of FLSA wage and child labor protections that the December 2008 Rule triggered, it is the Department's view that a suspension of the December 2008 Rule in its entirety is appropriate to provide an opportunity for a more complete review of this important regulatory issue.

III. Administrative Information

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (E.O.) 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). Section 3(f) of the E.O. defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The Department has determined that this Final Rule is not an ''economically significant regulatory action'' under Section 3(f)(1) of E.O.12866. The procedures for filing an *Application for Temporary Employment Certification* under the H–2A visa category on behalf of nonimmigrant temporary agricultural workers, under this regulation, will not have an economic impact of $100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, or public health or safety in a material way. In fact, this Final Rule is intended to provide to growers clear and consistent guidance on the requirements for participation in the H–2A temporary worker program, and to eliminate the potential for disruption, confusion, and processing delays resulting from the Department's and SWAs' lack of resources for efficient implementation of the December 2008 Rule. The Department, however, has determined that this Final Rule is a ''significant regulatory action'' under Section 3(f)(4) of the E.O. and accordingly OMB has reviewed this Final Rule.

Summary of Impacts

The changes in this Final Rule are expected to have little net direct cost impact on employers, above and beyond the baseline of the current costs required by the program as it is currently implemented. While the effect of the December 2008 Rule was to require employers to engage in recruitment of U.S. workers in advance of filing their applications for foreign labor certification, the Department included a transition period to enable it to implement the new rule and to enable employers to become accustomed to the filing procedures and new recruitment regime under the new regulations. During the transition period, employers initiate recruitment after filing the temporary labor certification application. The transition period contained in the December 2008 Rule applied to employers with a date of

need before July 1, 2009. On April 16, 2009, the Department published an Interim Final Rule extending the transition period to include all employers with a date of need on or before January 1, 2010. See 74 FR 17597. Therefore, employers will experience no change from the current application filing and recruitment procedures.

During the 9-month suspension period, employer costs for newspaper advertising will decrease slightly, as this Final Rule suspends the requirement that one of the two required advertisements be run on a Sunday. This Final Rule temporarily reinstates the requirement on employers to engage in post-filing recruitment efforts as determined by the OFLC Administrator. It is the Department's view that the protections and opportunities for employment for U.S. workers provided by this requirement more than outweigh the marginal uncertainty in recruitment costs for employers.

During the 9-month suspension period, civil money penalties are returned to the level established in 1987 (maximum of $1,000 per violation). The Department recognizes the deterrent effect of civil money penalties on fostering greater program compliance under the Final Rule, and will use, as appropriate, all of the tools available to ensure compliance with H–2A program requirements.

In the December 2008 Rule, the Department estimated the biggest cost to employers of that rule to be the increased cost of foreign recruitment, since employers can no longer allow foreign recruiters with whom they were in privity of contract to charge foreign workers fees for recruitment. Despite the temporary suspension, the Department does not anticipate any increase in employer costs because regulations issued by the Department of Homeland Security, USCIS on December 18, 2008 prohibit the payment of certain job-placement related fees by prospective H–2A workers. See 73 FR 76891 (codified at 8 CFR 214.2(h)(5)(xi)). Employers are encouraged to review their obligations under the USCIS rule with respect to payments made by foreign workers to foreign recruiters.

The Department also estimated that employers' recordkeeping costs under the December 2008 Rule would increase minimally; with the return to the previous H–2A Final Rule, the costs associated with recordkeeping requirements will minimally decrease.

The Department identified no other specific cost changes as a result of the December 2008 Rule and therefore, can identify no other specific cost changes that would result from the temporary suspension of that rule.

Based on historical program use, the Department estimates that approximately 83% of applications will have been processed by the effective date of this Final Rule, therefore few applications will be subject to the previous H–2A program rules during the 9-month suspension. The Department recognizes that for the employers submitting applications under the reinstated regulations, particularly employers who have already received certifications based on the December 2008 Rule, there will be some confusion and perhaps a change in labor costs for applications filed after the effective date of the suspension due to the different adverse effect wage rate (AEWR) methodology. However, in analyzing those potential costs it is unclear that such costs will be significant based on the number of users who will have already initiated the application process prior to the suspension.

B. Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared and made available for public comment. The RFA must describe the impact of the rule on small entities. See 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have significant economic impact on a substantial number of small entities. The Secretary has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), and certifies under the RFA at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not substantively change existing obligations for employers who choose to participate in the H–2A temporary agricultural worker program.

As a factual basis for such a certification, although this rule can and does affect small entities, there are not a substantial number of small entities that will be affected, nor is there a significant economic impact upon those small entities that are affected. Of the total 2,089,790 farms in the United States, 98 percent have sales of less than $750,000 per year and fall within SBA's definition of small entities. In FY 2007, however, only 7,725 employers filed requests for only 80,294 workers. That represents fewer than 1 percent of all farms in the United States. Even if all of the 7,725 employers who filed applications under H–2A in FY2007 were small entities, that is still a relatively small number of employers affected. However, the universe of filers expected to file applications under this Final Rule is far fewer than the 7,725 employers who filed in FY2007. The Department estimates approximately 1,313 employers to file during the 9-month period this Final Rule is in place, not all of which would be small entities.

Even more important than the number of small entities affected, the Department believes, for the reasons stated above, that the costs incurred by employers under this Final Rule will not be substantially different from those incurred under the current application filing process. Employers seeking to hire foreign workers on a temporary basis under the H–2A program must continue to establish to the Secretary of Labor's satisfaction that their recruitment attempts have not yielded enough qualified and available U.S. workers and that their hiring of foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. Similar to the current process, employers under this process will file a standardized application for temporary labor certification and will retain recruitment documentation, a recruitment report, and any supporting evidence or documentation justifying the temporary need for the services or labor to be performed. Therefore, the Department believes that this Final Rule is expected to have little net direct cost impact on employers, above and beyond the baseline of the current costs required by the program as it is currently implemented.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*) directs agencies to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector to determine whether the regulatory action imposes a Federal mandate which may result in expenditures by such governments or the private sector of $100,000,000 or more. A Federal mandate is defined in the Act at 2 U.S.C. 658(5)–(7) to include any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. Further, each agency is required to provide a process where State, local, and tribal governments may comment on the regulation as it develops, which further promotes

coordination between the Federal and the State, local, and tribal governments.

This Final Rule imposes a minimal duty upon State, local or tribal governments. However, as discussed above, this Final Rule will not result in expenditures of $100,000,000 by governments or private entities.

D. Executive Order 13132—Federalism

Executive Order 13132 addresses the Federalism impact of an agency's regulations on the States' authority. Under E.O. 13132, Federal agencies are required to consult with States prior to and during the implementation of national policies that have a direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Further, an agency is permitted to limit a State's discretion when it has statutory authority and the regulation is a national activity that addresses a problem of national significance. This Final Rule has no direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Executive Order 13175—Indian Tribal Governments

Executive Order 13175 requires Federal agencies to develop policies in consultation with tribal officials when those policies have tribal implications. This final rule regulates the H–2A visa program and does not have tribal implications. Therefore, the Department has determined that this E.O. does not apply to this rulemaking.

F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Federal regulations and policies on families. The assessment must address whether the regulation strengthens or erodes the stability, integrity, autonomy, or safety of the family.

The final rule does not have an impact on the autonomy or integrity of the family as an institution, as it is described under this provision. The Department has determined that although there may be some costs associated with the final rule, they are not of a magnitude to adversely affect family well-being.

G. Executive Order 12630—Protected Property Rights

Executive Order 12630, Governmental Actions and the Interference with Constitutionally Protected Property Rights, prevents the Federal government from taking private property for public use without compensation. It further institutes an affirmative obligation that agencies evaluate all policies and regulations to ensure there is no impact on constitutionally protected property rights. Such policies include rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. The Department has determined that this Final Rule has no effect on constitutionally protected property rights.

H. Executive Order 12988—Civil Justice Reform

Section 3 of E.O. 12988, Civil Justice Reform, requires Federal agencies to draft regulations in a manner that will reduce needless litigation and will not unduly burden the Federal court system. Therefore, agencies are required to review regulations for drafting errors and ambiguity; to minimize litigation; ensure that it provides a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction.

The rule has been drafted in language that states as clearly as possible the bases for the decision to suspend the December 2008 Rule and reinstate the Prior Rule. Therefore, the Department has determined that the regulation meets the applicable standards set forth in Section 3 of E.O. 12988. The Department received no comments about this section.

I. Plain Language

Every Federal agency is required to draft regulations that are written in plain language to better inform the public about policies. The Department has assessed this Final Rule under the plain language requirements and determined that it follows the Government's standards requiring documents to be accessible and understandable to the public. The purpose of this Final Rule is to provide to growers clear and consistent guidance on the requirements for participation in the H–2A temporary worker program, and to eliminate the potential for disruption, confusion, and processing delays resulting from the Department's and SWAs' lack of resources for efficient implementation of the temporarily suspended rule.

J. Executive Order 13211—Energy Supply

This final rule is not subject to E.O. 13211, which assesses whether a regulation is likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, the Department has determined that this rule does not represent a significant energy action and does not warrant a Statement of Energy Effects.

K. Paperwork Reduction Act

The paperwork requirements of this rule have been previously complied with in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Specifically, under the Prior Regulation, the information collection instrument used by the employer to file an application was the Form ETA–750. This is a currently approved collection under OMB control number 1205–0015, which expires 10/31/2011. Because the request for OMB to approve the extension of this collection was filed in 2008, prior to the effective date of the rule being now suspended, the burden information reported to OMB in that extension request took into account the H–2A program's time and monetary burden on the public. Therefore, no adjustments are necessary at this time.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 780

Agricultural commodities, Agriculture, Employment, Forests and forest products, Labor, Minimum wages, Nursery stock, Overtime pay, Wages.

29 CFR Part 788

Employment, Forests and forest products, Labor, Overtime pay, Wages.

■ Accordingly, the Department of Labor amends 20 CFR part 655 and 29 CFR parts 501, 780, and 788 as follows:

Title 20—Employees' Benefits

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 *et seq.*

■ 2. Revise the heading to part 655 to read as set forth above.

§ 655.5 [Redesignated as § 655.81 and Suspended]

■ 3a. Redesignate § 655.5 as § 655.81 and suspend it.

§ 655.1 [Redesignated as § 655.5 and Suspended]

■ 3b. Redesignate § 655.1 as § 655.5 and suspend it.

■ 4. Add § 655.1 to read as follows:

§ 655.1 Scope and purpose of subpart A.

This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant aliens in the United States in occupations other than agriculture, logging, or registered nursing.

Subpart B [Redesignated as Subpart N and Suspended]

■ 5. Redesignate subpart B, consisting of §§ 655.90, 655.92, 655.93, and 655.100 through 655.119, as subpart N, consisting of §§ 655.1290, 655.1292, 655.1293, and 655.1300 through 655.1319, and suspend newly designated subpart N.

■ 6. Add subpart B to read as follows:

Subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers)

Sec.

655.90 Scope and purpose of subpart B.
655.92 Authority of the Office of Foreign Labor Certification (OFLC) Administrator.
655.93 Special circumstances.
655.100 Overview of this subpart and definition of terms.
655.101 Temporary alien agricultural labor certification applications.
655.102 Contents of job offers.
655.103 Assurances.
655.104 Determinations based on acceptability of H–2A applications.
655.105 Recruitment period.
655.106 Referral of U.S. workers; determinations based on U.S. worker availability and adverse effect; activities after receipt of the temporary alien agricultural labor certification.
655.107 Adverse effect wage rates (AEWRs).
655.108 H–2A applications involving fraud or willful misrepresentation.
655.110 Employer penalties for noncompliance with terms and conditions of temporary alien agricultural labor certifications.
655.111 Petition for higher meal charges.
655.112 Administrative review and de novo hearing before an administrative law judge.
655.113 Job Service Complaint System; enforcement of work contracts.

Subpart B—Labor Certification Process for Temporary Agricultural Employment in the United States (H–2A Workers)

§ 655.90 Scope and purpose of subpart B.

(a) *General.* This subpart sets out the procedures established by the Secretary of Labor to acquire information sufficient to make factual determinations of: (1) Whether there are sufficient able, willing, and qualified U.S. workers available to perform the temporary and seasonal agricultural employment for which an employer desires to import nonimmigrant foreign workers (H–2A workers); and (2) whether the employment of H–2A workers will adversely effect the wages and working conditions of workers in the U.S. similarly employed. Under the authority of the INA, the Secretary of Labor has promulgated the regulations in this subpart. This subpart sets forth the requirements and procedures applicable to requests for certification by employers seeking the services of temporary foreign workers in agriculture. This subpart provides the Secretary's methodology for the two-fold determination of availability of domestic workers and of any adverse effect which would be occasioned by the use of foreign workers, for particular temporary and seasonal agricultural jobs in the United States.

(b) *The statutory standard.* (1) A petitioner for H–2A workers must apply to the Secretary of Labor for a certification that, as stated in the INA:

(A) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) Section 216(b) of the INA further requires that the Secretary may not issue a certification if the conditions regarding U.S. worker availability and adverse effect are not met, and may not issue a certification if, as stated in the INA:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or non-immigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multistate region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate

employment service system of the employer's job offer. The obligation to engage in positive recruitment * * * shall terminate on the date the H–2A workers depart for the employer's place of employment.

(3) Regarding the labor certification determination itself, section 216(c)(3) of the INA, as quoted in the following, specifically directs the Secretary to make the certification if:

(i) The employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) The employer does not actually have, or has not been provided with referrals of, qualified individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

(c) *The Secretary's determinations.* Before any factual determination can be made concerning the availability of U.S. workers to perform particular job opportunities, two steps must be taken. First, the minimum level of wages, terms, benefits, and conditions for the particular job opportunities below which similarly employed U.S. workers would be adversely affected must be established. (The regulations in this subpart establish such minimum levels for wages, terms, benefits, and conditions of employment.) Second, the wages, terms, benefits, and conditions offered and afforded to the aliens must be compared to the established minimum levels. If it is concluded that adverse effect would result, the ultimate determination of availability within the meaning of the INA cannot be made since U.S. workers cannot be expected to accept employment under conditions below the established minimum levels. *Florida Sugar Cane League, Inc.* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976). Once a determination of no adverse effect has been made, the availability of U.S. workers can be tested only if U.S. workers are actively recruited through the offer of wages, terms, benefits, and conditions at least at the minimum level or the level offered to the aliens, whichever is higher. The regulations in this subpart set forth requirements for recruiting U.S. workers in accordance with this principle.

(d) *Construction.* This subpart shall be construed to effectuate the purpose of the INA that U.S. workers rather than aliens be employed wherever possible. *Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 493, 500 (1st Cir. 1974); *Flecha* v. *Quiros*, 567 F. 2d 1154, 1156 (1st Cir. 1977). Where temporary alien workers are admitted, the terms and conditions of their employment must not result in a lowering of the wages, terms, and conditions of domestic workers similarly employed. *Williams* v. *Usery*, 531 F. 2d 305, 306 (5th Cir. 1976), cert. denied, 429 U.S. 1000, and the job benefits extended to any U.S. workers shall be at least those extended to the alien workers.

§ 655.92 Authority of the Office of Foreign Labor Certification (OFLC) Administrator.

Under this subpart, the accepting for consideration and the making of temporary alien agricultural labor certification determinations are ordinarily performed by the Office of Foreign Labor Certification (OFLC) Administrator (OFLC Administrator), who, in turn, may delegate this responsibility to a designated staff member. The OFLC Administrator will informally advise the employer or agent of the name of the official who will make determinations with respect to the application.

§ 655.93 Special circumstances.

(a) *Systematic process.* The regulations under this subpart are designed to provide a systematic process for handling applications from the kinds of employers who have historically utilized nonimmigrant alien workers in agriculture, usually in relation to the production or harvesting of a particular agricultural crop for market, and which normally share such characteristics as:

(1) A fixed-site farm, ranch, or similar establishment;

(2) A need for workers to come to their establishment from other areas to perform services or labor in and around their establishment;

(3) Labor needs which will normally be controlled by environmental conditions, particularly weather and sunshine; and

(4) A reasonably regular workday or workweek.

(b) *Establishment of special procedures.* In order to provide for a limited degree of flexibility in carrying out the Secretary's responsibilities under the INA, while not deviating from the statutory requirements to determine U.S. worker availability and make a determination as to adverse effect, the OFLC Administrator has the authority to establish special procedures for processing H–2A applications when employers can demonstrate upon written application to and consultation with the OFLC Administrator that special procedures are necessary. In a like manner, for work in occupations characterized by other than a reasonably regular workday or workweek, such as the range production of sheep or other livestock, the OFLC Administrator has the authority to establish monthly, weekly, or bi-weekly adverse effect wage rates for those occupations, for a Statewide or other geographical area, other than the rates established pursuant to § 655.107 of this part, provided that the OFLC Administrator uses a methodology to establish such adverse effect wage rates which is consistent with the methodology in § 655.107(a). Prior to making determinations under this paragraph (b), the OFLC Administrator may consult with employer representatives and worker representatives.

(c) *Construction.* This subpart shall be construed to permit the OFLC Administrator to continue and, where the OFLC Administrator deems appropriate, to revise the special procedures previously in effect for the handling of applications for sheepherders in the Western States (and to adapt such procedures to occupations in the range production of other livestock) and for custom combine crews.

§ 655.100 Overview of this subpart and definition of terms.

(a) *Overview*—(1) *Filing applications.* This subpart provides guidance to an employer who desires to apply for temporary alien agricultural labor certification for the employment of H–2A workers to perform agricultural employment of a temporary or seasonal nature. The regulations in this subpart provide that such employer shall file an H–2A application, including a job offer, on forms prescribed by the Employment and Training Administration (ETA), which describes the material terms and conditions of employment to be offered and afforded to U.S. workers and H–2A workers, with the OFLC Administrator. The entire application shall be filed with the OFLC Administrator no less than 45 calendar days before the first date of need for workers, and a copy of the job offer shall be submitted at the same time to the local office of the State employment service agency which serves the area of intended employment. Under the regulations, the OFLC Administrator will promptly review the application and notify the applicant in writing if there are deficiencies which render the application not acceptable for consideration, and afford the applicant a five-calendar-day period for resubmittal of an amended application or an appeal of the OFLC Administrator's refusal to approve the application as acceptable for consideration. Employers are encouraged to file their applications in advance of the 45-calendar-day period mentioned above in this paragraph

(a)(1). Sufficient time should be allowed for delays that might arise due to the need for amendments in order to make the application acceptable for consideration.

(2) *Amendment of applications.* This subpart provides for the amendment of applications, at any time prior to the OFLC Administrator's certification determination, to increase the number of workers requested in the initial application; without requiring, under certain circumstances, an additional recruitment period for U.S. workers.

(3) *Untimely applications.* If an H–2A application does not satisfy the specified time requirements, this subpart provides for the OFLC Administrator's advice to the employer in writing that the certification cannot be granted because there is not sufficient time to test the availability of U.S. workers; and provides for the employer's right to an administrative review or a de novo hearing before an administrative law judge. Emergency situations are provided for, wherein the OFLC Administrator may waive the specified time periods.

(4) *Recruitment of U.S. workers; determinations*—(i) *Recruitment.* This subpart provides that, where the application is accepted for consideration and meets the regulatory standards, the State agency and the employer begin to recruit U.S. workers. If the employer has complied with the criteria for certification, including recruitment of U.S. workers, by 20 calendar days before the date of need specified in the application (except as provided in certain cases), the OFLC Administrator makes a determination to grant or deny, in whole or in part, the application for certification.

(ii) *Granted applications.* This subpart provides that the application for temporary alien agricultural labor certification is granted if the OFLC Administrator finds that the employer has not offered foreign workers higher wages or better working conditions (or has imposed less restrictions on foreign workers) than those offered and afforded to U.S. workers; that sufficient U.S. workers who are able, willing, and qualified will not be available at the time and place needed to perform the work for which H–2A workers are being requested; and that the employment of such aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.

(iii) *Fees*—(A) *Amount.* This subpart provides that each employer (except joint employer associations) of H–2A workers shall pay to the OFLC Administrator fees for each temporary alien agricultural labor certification received. The fee for each employer receiving a temporary alien agricultural labor certification is $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, each employer-member receiving a temporary alien agricultural labor certification shall pay a fee of $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. The joint employer association will not be charged a separate fee.

(B) *Timeliness of payment.* The fee must be received by the OFLC Administrator no later than 30 calendar days after the granting of each temporary alien agricultural labor certification. Fees received any later are untimely. Failure to pay fees in a timely manner is a substantial violation which may result in the denial of future temporary alien agricultural labor certifications.

(iv) *Denied applications.* This subpart provides that if the application for temporary alien agricultural labor certification is denied, in whole or in part, the employer may seek review of the denial, or a de novo hearing, by an administrative law judge as provided in this subpart.

(b) *Definitions of terms used in this subpart.* For the purposes of this subpart:

Accept for consideration means, with respect to an application for temporary alien agricultural labor certification, the action by the OFLC Administrator to notify the employer that a filed temporary alien agricultural labor certification application meets the adverse effect criteria necessary for processing. An application accepted for consideration ultimately will be approved or denied in a temporary alien agricultural labor certification determination.

Administrative law judge means a person within the Department of Labor Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105; or a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, but which shall hear and decide appeals as set forth in § 655.112 of this part. ''*Chief Administrative Law Judge*'' means the chief official of the Department of Labor Office of Administrative Law Judges or the Chief Administrative Law Judge's designee.

Administrator, Office of Foreign Labor Certification (OFLC) means the primary official of the Office of Foreign Labor Certification (OFLC Administrator), or the OFLC Administrator's designee.

Adverse effect wage rate (AEWR) means the wage rate which the OFLC Administrator has determined must be offered and paid, as a minimum, to every H–2A worker and every U.S. worker for a particular occupation and/or area in which an employer employs or seeks to employ an H–2A worker so that the wages of similarly employed U.S. workers will not be adversely affected.

Agent means a legal entity or person, such as an association of agricultural employers, or an attorney for an association, which (1) is authorized to act on behalf of the employer for temporary alien agricultural labor certification purposes, and (2) is not itself an employer, or a joint employer, as defined in this paragraph (b).

Department of Homeland Security (DHS) through the *United States Citizenship and Immigration Services (USCIS)* makes the determination under the INA on whether or not to grant visa petitions to employers seeking H–2A workers to perform temporary agricultural work in the United States.

DOL means the United States Department of Labor.

Eligible worker means a U.S. worker, as defined in this section.

Employer means a person, firm, corporation or other association or organization which suffers or permits a person to work and (1) which has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ workers at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee. An association of employers shall be considered the sole employer if it has the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with an employer member if it shares with the employer member one or more of the definitional indicia.

Employment Service (ES), in this subpart, refers to the system of Federal and State entities responsible for administration of the labor certification process for temporary and seasonal agricultural employment of nonimmigrant foreign workers. This

includes the State Workforce Agencies (SWAs), the National Processing Centers (NPCs) and the Office of Foreign Labor Certification (OFLC).

Employment Standards Administration means the agency within the Department of Labor (DOL), which includes the Wage and Hour Division, and which is charged with the carrying out of certain functions of the Secretary under the INA.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the Office of Foreign Labor (OFLC).

Federal holiday means a legal public holiday as defined at 5 U.S.C. 6103.

H–2A worker means any nonimmigrant alien admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

INA means the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*).

Job offer means the offer made by an employer or potential employer of H–2A workers to both U.S. and H–2A workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

Job opportunity means a job opening for temporary, full-time employment at a place in the United States to which U.S. workers can be referred.

Office of Foreign Labor Certification (OFLC) means the organizational component within the ETA that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the INA concerning alien workers seeking admission to the United States in order to work under the Immigration and Nationality Act, as amended.

Positive recruitment means the active participation of an employer or its authorized hiring agent in locating and interviewing applicants in other potential labor supply areas and in the area where the employer's establishment is located in an effort to fill specific job openings with U.S. workers.

Prevailing means, with respect to certain benefits other than wages provided by employers and certain practices engaged in by employers, that:

(i) Fifty percent or more of employers in an area and for an occupation engage in the practice or offer the benefit; and

(ii) This 50 percent or more of employers also employs 50 percent or more of U.S. workers in the occupation and area (including H–2A and non-H–2A employers for purposes of determinations concerning the provision of family housing, frequency of wage payments, and workers supplying their own bedding, but non-H–2A employers only for determinations concerning the provision of advance transportation and the utilization of farm labor contractors).

Secretary means the Secretary of Labor or the Secretary's designee.

Solicitor of Labor means the Solicitor, United States Department of Labor, and includes employees of the Office of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this subpart.

State Workforce Agency (SWA) means the State employment service agency designated under § 4 of the Wagner-Peyser Act to cooperate with OFLC in the operation of the ES System.

Temporary alien agricultural labor certification means the certification made by the Secretary of Labor with respect to an employer seeking to file with DHS a visa petition to import an alien as an H–2A worker, pursuant to sections 101(a)(15)(H)(ii)(a), 214(a) and (c), and 216 of the INA that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services involved in the petition, and (2) the employment of the alien in such agricultural labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184 (a) and (c), and 1186).

Temporary alien agricultural labor certification determination means the written determination made by the OFLC Administrator to approve or deny, in whole or in part, an application for temporary alien agricultural labor certification.

United States (U.S.) worker means any worker who, whether a U.S. national, a U.S. citizen, or an alien, is legally permitted to work in the job opportunity within the United States (as defined at § 101(a)(38) of the INA (8 U.S.C. 1101(a)(38)).

Wages means all forms of cash remuneration to a worker by an employer in payment for personal services.

(c) *Definition of agricultural labor or services of a temporary or seasonal nature.* For the purposes of this subpart, ''agricultural labor or services of a temporary or seasonal nature'' means the following:

(1) ''*Agricultural labor or services*''. Pursuant to section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)), ''agricultural labor or services'' is defined for the purposes of this subpart as either ''agricultural labor'' as defined and applied in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) or ''agriculture'' as defined and applied in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)). An occupation included in either statutory definition shall be ''agricultural labor or services'', notwithstanding the exclusion of that occupation from the other statutory definition. For informational purposes, the statutory provisions are quoted below:

(i) ''*Agricultural labor*''. Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), quoted as follows, defines the term ''agricultural labor'' to include all service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) Services performed in the employ of the owner or tenant or other operator of a farm, in connection with the operation, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable

with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term ''farm'' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(ii) ''*Agriculture*''. Section 203(f) of title 29, United States Code, (section 3(f) of the Fair Labor Standards Act of 1938, as codified), quoted as follows, defines ''agriculture'' to include:

(f) * * * farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities as defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(iii) ''*Agricultural commodity*''. Section 1141j(g) of title 12, United States Code, (section 15(g) of the Agricultural Marketing Act, as amended), quoted as follows, defines ''agricultural commodity'' to include:

(g) * * * in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum rosin, as defined in section 92 of Title 7.

(iv) ''*Gum rosin*''. Section 92 of title 7, United States Code, quoted as follows, defines ''gum spirits of turpentine'' and ''gum rosin'' as—

(c) ''*Gum spirits of turpentine*'' means spirits of turpentine made from gum (oleoresin) from a living tree.

(h) ''*Gum rosin*'' means rosin remaining after the distillation of gum spirits of turpentine.

(2) ''*Of a temporary or seasonal nature*''—(i) ''*On a seasonal or other temporary basis*''. For the purposes of this subpart, ''of a temporary or seasonal nature'' means ''on a seasonal or other temporary basis'', as defined in the Employment Standards Administration's Wage and Hour Division's regulation at 29 CFR 500.20 under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

(ii) *MSPA definition.* For informational purposes, the definition of ''on a seasonal or other temporary basis'', as set forth at 29 CFR 500.20, is provided below:

''*On a seasonal or other temporary basis*'' means:

Labor is performed on a seasonal basis, where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.

A worker is employed on ''other temporary basis'' where he is employed for a limited time only or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is contemplated to continue indefinitely, is not temporary.

''*On a seasonal or other temporary basis*'' does not include the employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year round basis.

''*On a seasonal or other temporary basis*'' does not include the employment of any worker who is living at his permanent place of residence, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for his employer and is not primarily employed to do field work.

(iii) ''*Temporary*''. For the purposes of this subpart, the definition of ''temporary'' in paragraph (c)(2)(ii) of this section refers to any job opportunity covered by this subpart where the employer needs a worker for a position, either temporary or permanent, for a limited period of time, which shall be for less than one year, unless the original temporary alien agricultural labor certification is extended based on unforeseen circumstances, pursuant to § 655.106(c)(3) of this part.

§ 655.101 Temporary alien agricultural labor certification applications.

(a) *General*—(1) *Filing of application.* An employer who anticipates a shortage of U.S. workers needed to perform agricultural labor or services of a temporary or seasonal nature may apply to the OFLC Administrator, for a temporary alien agricultural labor certification for temporary foreign workers (H–2A workers). A signed application for temporary alien agricultural worker certification shall be filed by the employer, or by an agent of the employer, with the OFLC Administrator. At the same time, a duplicate application shall be submitted to the SWA serving the area of intended employment.

(2) *Applications filed by agents.* If the temporary alien agricultural labor certification application is filed by an agent on behalf of an employer, the agent may sign the application if the application is accompanied by a signed statement from the employer which authorizes the agent to act on the employer's behalf. The employer may authorize the agent to accept for interview workers being referred to the job and to make hiring commitments on behalf of the employer. The statement shall specify that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for compliance with all regulatory and other legal requirements.

(3) *Applications filed by associations.* If an association of agricultural producers which uses agricultural labor or services files the application, the association shall identify whether it is: (i) The sole employer; (ii) a joint employer with its employer-member employers; or (iii) the agent of its employer-members. The association shall submit documentation sufficient to enable the OFLC Administrator to verify the employer or agency status of the association; and shall identify by name and address each member which will be an employer of H–2A workers.

(b) *Application form.* Each H–2A application shall be on a form or forms prescribed by ETA. The application shall state the total number of workers the employer anticipates employing in the agricultural labor or service activity during the covered period of employment. The application shall include:

(1) *A copy of the job offer which will be used by each employer for the recruitment of U.S. and H–2A workers.* The job offer shall state the number of workers needed by the employer, based upon the employer's anticipation of a shortage of U.S. workers needed to perform the agricultural labor or services, and the specific estimated date on which the workers are needed. The job offer shall comply with the requirements of §§ 655.102 and 653.501 of this chapter, and shall be signed by the employer or the employer's agent on behalf of the employer; and

(2) An agreement to abide by the assurances required by § 655.103 of this part.

(c) *Timeliness.* Applications for temporary alien agricultural labor certification are not required to be filed

more than 45 calendar days before the first day of need. The employer shall be notified by the OFLC Administrator in writing within seven calendar days of filing the application if the application is not approved as acceptable for consideration. The OFLC Administrator's temporary alien agricultural labor certification determination on the approved application shall be made no later than 20 calendar days before the date of need if the employer has complied with the criteria for certification. To allow for the availability of U.S. workers to be tested, the following process applies:

(1) *Application filing date.* The entire H–2A application, including the job offer, shall be filed with the OFLC Administrator, in duplicate, no less than 45 calendar days before the first date on which the employer estimates that the workers are needed. Applications may be filed in person; may be mailed to the OFLC Administrator (Attention: H–2A Certifying Officer) by certified mail, return receipt requested; or delivered by guaranteed commercial delivery which will ensure delivery to the OFLC Administrator and provide the employer with a documented acknowledgment of receipt of the application by the OFLC Administrator. Any application received 45 calendar days before the date of need will have met the minimum timeliness of filing requirement as long as the application is eventually approved by the OFLC Administrator as being acceptable for processing.

(2) *Review of application; recruitment; certification determination period.* Section 655.104 of this part requires the OFLC Administrator to promptly review the application, and to notify the applicant in writing within seven calendar days of any deficiencies which render the application not acceptable for consideration and to afford an opportunity for resubmittal of an amended application. The employer shall have five calendar days in which to file an amended application. Section 655.106 of this part requires the OFLC Administrator to grant or deny the temporary alien agricultural labor certification application no later than 20 calendar days before the date on which the workers are needed, provided that the employer has complied with the criteria for certification, including recruitment of eligible individuals. Such recruitment, for the employer, the State agencies, and DOL to attempt to locate U.S. workers locally and through the circulation of intrastate and interstate agricultural clearance job orders acceptable under § 653.501 of this chapter and under this subpart, shall begin on the date that an acceptable application is filed, except that the SWA shall begin to recruit workers locally beginning on the date it first receives the application. The time needed to obtain an application acceptable for consideration (including the job offer) after the five-calendar-day period allowed for an amended application will postpone day-for-day the certification determination beyond the 20 calendar days before the date of need, provided that the OFLC Administrator notifies the applicant of any deficiencies within seven calendar days after receipt of the application. Delays in obtaining an application acceptable for consideration which are directly attributable to the OFLC Administrator will not postpone the certification determination beyond the 20 calendar days before the date of need. When an employer resubmits to the OFLC Administrator (with a copy to the SWA) an application with modifications required by the OFLC Administrator, and the OFLC Administrator approves the modified application as meeting necessary adverse effect standards, the modified application will not be rejected solely because it now does not meet the 45-calendar-day filing requirement. If an application is approved as being acceptable for processing without need for any amendment within the seven-calendar-day review period after initial filing, recruitment of U.S. workers will be considered to have begun on the date the application was received by the OFLC Administrator; and the OFLC Administrator shall make the temporary alien agricultural labor certification determination required by § 655.106 of this part no later than 20 calendar days before the date of need provided that other regulatory conditions are met.

(3) *Early filing.* Employers are encouraged, but not required, to file their applications in advance of the 45-calendar-day minimum period specified in paragraph (c)(1) of this section, to afford more time for review and discussion of the applications and to consider amendments, should they be necessary. This is particularly true for employers submitting H–2A applications for the first time who may not be familiar with the Secretary's requirements for an acceptable application or U.S. worker recruitment. Such employers particularly are encouraged to consult with DOL and SWA staff for guidance and assistance well in advance of the minimum 45-calendar-day filing period.

(4) *Local recruitment; preparation of clearance orders.* At the same time the employer files the H–2A application with the OFLC Administrator, a copy of the application shall be submitted to the SWA which will use the job offer portion of the application to prepare a local job order and begin to recruit U.S. workers in the area of intended employment. The SWA also shall begin preparing an agricultural clearance order, but such order will not be used to recruit workers in other geographical areas until the employer's H–2A application is accepted for consideration and the clearance order is approved by the OFLC Administrator and the SWA is so notified by the OFLC Administrator.

(5) [Reserved]

(d) *Amendments to application to increase number of workers.* Applications may be amended at any time, prior to an OFLC Administrator certification determination, to increase the number of workers requested in the initial application by not more than 20 percent (50 percent for employers of less than ten workers) without requiring an additional recruitment period for U.S. workers. Requests for increases above the percent prescribed, without additional recruitment, may be approved only when the need for additional workers could not have been foreseen, and that crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period.

(e) *Minor amendments to applications.* Minor technical amendments may be requested by the employer and made to the application and job offer prior to the certification determination if the OFLC Administrator determines they are justified and will have no significant effect upon the OFLC Administrator's ability to make the labor certification determination required by § 655.106 of this part. Amendments described at paragraph (d) of this section are not ''minor technical amendments''.

(f) *Untimely applications*—(1) *Notices of denial.* If an H–2A application, or any part thereof, does not satisfy the time requirements specified in paragraph (c) of this section, and if the exception in paragraph (d) of this section does not apply, the OFLC Administrator may then advise the employer in writing that the certification cannot be granted because, pursuant to paragraph (c) of this section, there is not sufficient time to test the availability of U.S. workers. The notice of denial shall inform the employer of its right to an administrative review or de novo hearing before an administrative law judge.

(2) *Emergency situations.* Notwithstanding paragraph (f)(1) of this section, in emergency situations the

OFLC Administrator may waive the time period specified in this section on behalf of employers who have not made use of temporary alien agricultural workers (H–2 or H–2A) for the prior year's agricultural season or for any employer which has other good and substantial cause (which may include unforeseen changes in market conditions), provided that the OFLC Administrator has an opportunity to obtain sufficient labor market information on an expedited basis to make the labor certification determination required by § 216 of the INA (8 U.S.C. 1186). In making this determination, the OFLC Administrator will accept information offered by and may consult with representatives of the U.S. Department of Agriculture.

(g) *Length of job opportunity.* The employer shall set forth on the application sufficient information concerning the job opportunity to demonstrate to the OFLC Administrator that the need for the worker is ''of a temporary or seasonal nature'', as defined at § 655.100(c)(2) of this part. Job opportunities of 12 months or more are presumed to be permanent in nature. Therefore, the OFLC Administrator shall not grant a temporary alien agricultural labor certification where the job opportunity has been or would be filled by an H–2A worker for a cumulative period, including temporary alien agricultural labor certifications and extensions, of 12 months or more, except in extraordinary circumstances.

§ 655.102 Contents of job offers.

(a) *Preferential treatment of aliens prohibited.* The employer's job offer to U.S. workers shall offer the U.S. workers no less than the same benefits, wages, and working conditions which the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's H–2A workers. This does not relieve the employer from providing to H–2A workers at least the same level of minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(b) *Minimum benefits, wages, and working conditions.* Except when higher benefits, wages or working conditions are required by the provisions of paragraph (a) of this section, DOL has determined that in order to protect similarly employed U.S. workers from adverse effect with respect to benefits, wages, and working conditions, every job offer which must accompany an H–2A application always shall include each of the following minimum benefit, wage, and working condition provisions:

(1) *Housing.* The employer shall provide to those workers who are not reasonably able to return to their residence within the same day housing, without charge to the worker, which may be, at the employer's option, rental or public accommodation type housing.

(i) *Standards for employer-provided housing.* Housing provided by the employer shall meet the full set of DOL Occupational Safety and Health Administration standards set forth at 29 CFR 1910.142, or the full set of standards at §§ 654.404–654.417 of this chapter, whichever are applicable, except as provided for under paragraph (b)(1)(iii) of this section. Requests by employers, whose housing does not meet the applicable standards, for conditional access to the intrastate or interstate clearance system, shall be processed under the procedures set forth at § 654.403 of this chapter.

(ii) *Standards for range housing.* Housing for workers principally engaged in the range production of livestock shall meet standards of the DOL Occupational Safety and Health Administration for such housing. In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock shall meet guidelines issued by ETA.

(iii) *Standards for other habitation.* Rental, public accommodation, or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards shall apply. In the absence of applicable local or State standards, Occupational Safety and Health Administration standards at 29 CFR 1910.142 shall apply. Any charges for rental housing shall be paid directly by the employer to the owner or operator of the housing. When such housing is to be supplied by an employer, the employer shall document to the satisfaction of the OFLC Administrator that the housing complies with the local, State, or Federal housing standards applicable under this paragraph (b)(1)(iii).

(iv) *Charges for public housing.* If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

(v) *Deposit charges.* Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. However, employers may require workers to reimburse them for damage caused to housing by the individual workers found to have been responsible for damage which is not the result of normal wear and tear related to habitation.

(vi) *Family housing.* When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, family housing shall be provided to workers with families who request it.

(2) *Workers' compensation.* The employer shall provide, at no cost to the worker, insurance, under a State workers' compensation law or otherwise, covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law, if any, for comparable employment. The employer shall furnish the name of the insurance carrier and the insurance policy number, or, if appropriate, proof of State law coverage, to the OFLC Administrator prior to the issuance of a labor certification.

(3) *Employer-provided items.* Except as provided below, the employer shall provide, without charge including deposit charge, to the worker all tools, supplies, and equipment required to perform the duties assigned; the employer may charge the worker for reasonable costs related to the worker's refusal or negligent failure to return any property furnished by the employer or due to such worker's willful damage or destruction of such property. Where it is a common practice in the particular area, crop activity and occupation for workers to provide tools and equipment, with or without the employer reimbursing the workers for the cost of providing them, such an arrangement is permissible if approved in advance by the OFLC Administrator.

(4) *Meals.* Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall provide each worker with three meals a day. When such facilities are not available, the employer either shall provide each worker with three meals a day or shall furnish free and convenient cooking and kitchen facilities to the workers which will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer shall state the charge, if any, to the worker for such meals. Until a new

amount is set pursuant to this paragraph (b)(4), the charge shall not be more than $5.26 per day unless the OFLC Administrator has approved a higher charge pursuant to § 655.111 of this part. Each year the charge allowed by this paragraph (b)(4) will be changed by the same percentage as the 12-month percent change in the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on the date of their publication by the OFLC Administrator as a notice in the **Federal Register**.

(5) *Transportation; daily subsistence*—(i) *Transportation to place of employment.* The employer shall advance transportation and subsistence costs (or otherwise provide them) to workers when it is the prevailing practice of non-H–2A agricultural employers in the occupation in the area to do so, or when such benefits are extended to H–2A workers. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved. If the employer has not previously advanced such transportation and subsistence costs to the worker or otherwise provided such transportation or subsistence directly to the worker by other means and if the worker completes 50 percent of the work contract period, the employer shall pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer to the place of employment. The amount of the daily subsistence payment shall be at least as much as the employer will charge the worker for providing the worker with three meals a day during employment. If no charges will be made for meals and free and convenient cooking and kitchen facilities will be provided, the amount of the subsistence payment shall be no less than the amount permitted under paragraph (b)(4) of this section.

(ii) *Transportation from place of employment.* If the worker completes the work contract period, the employer shall provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or, if the worker has contracted with a subsequent employer who has not agreed in that contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer shall provide or pay for such expenses; except that, if the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer is not required to provide or pay for such expenses.

(iii) *Transportation between living quarters and worksite.* The employer shall provide transportation between the worker's living quarters (i.e., housing provided by the employer pursuant to paragraph (b)(1) of this section) and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations. This paragraph (b)(5)(iii) is applicable to the transportation of workers eligible for housing, pursuant to paragraph (b)(1) of this section.

(6) *Three-fourths guarantee*—(i) *Offer to worker.* The employer shall guarantee to offer the worker employment for at least three-fourths of the workdays of the total periods during which the work contract and all extensions thereof are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the expiration date specified in the work contract or in its extensions, if any. If the employer affords the U.S. or H–2A worker during the total work contract period less employment than that required under this paragraph (b)(6), the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of days. For purposes of this paragraph (b)(6), a workday shall mean the number of hours in a workday as stated in the job order and shall exclude the worker's Sabbath and Federal holidays. An employer shall not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time specified in the job order. The work shall be offered for at least three-fourths of the workdays (that is, ¾ × (number of days) × (specified hours)). Therefore, if, for example, the contract contains 20 eight-hour workdays, the worker shall be offered employment for 120 hours during the 20 workdays. A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker shall not be required to work for more than the number hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays.

(ii) *Guarantee for piece-rate-paid worker.* If the worker will be paid on a piece rate basis, the employer shall use the worker's average hourly piece rate earnings or the AEWR, whichever is higher, to calculate the amount due under the guarantee.

(iii) *Failure to work.* Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to do so pursuant to paragraph (b)(6)(i) of this section and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

(iv) *Displaced H–2A worker.* The employer shall not be liable for payment under this paragraph (b)(6) with respect to an H–2A worker whom the OFLC Administrator certifies is displaced because of the employer's compliance with § 655.103(e) of this part.

(7) *Records.* (i) The employer shall keep accurate and adequate records with respect to the workers' earnings including field tally records, supporting summary payroll records and records showing the nature and amount of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee at paragraph (b)(6) of this section); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered in accordance with the three-fourths guarantee at paragraph (b)(6) of this section, the records shall state the reason or reasons therefore.

(iii) Upon reasonable notice, the employer shall make available the records, including field tally records and supporting summary payroll records for inspection and copying by representatives of the Secretary of Labor, and by the worker and representatives designated by the worker; and

(iv) The employer shall retain the records for not less than three years after the completion of the work contract.

(8) *Hours and earnings statements.* The employer shall furnish to the worker on or before each payday in one or more written statements the following information:

(i) The worker's total earnings for the pay period;

(ii) The worker's hourly rate and/or piece rate of pay;

(iii) The hours of employment which have been offered to the worker (broken out by offers in accordance with and over and above the guarantee);

(iv) The hours actually worked by the worker;

(v) An itemization of all deductions made from the worker's wages; and

(vi) If piece rates are used, the units produced daily.

(9) *Rates of pay.* (i) If the worker will be paid by the hour, the employer shall pay the worker at least the adverse effect wage rate in effect at the time the work is performed, the prevailing hourly wage rate, or the legal Federal or State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period; or

(ii)(A) If the worker will be paid on a piece rate basis and the piece rate does not result at the end of the pay period in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate, the worker's pay shall be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the appropriate hourly wage rate for each hour worked; and the piece rate shall be no less than the piece rate prevailing for the activity in the area of intended employment; and

(B) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention,

(*1*) Such standards shall be specified in the job offer and be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum; or

(*2*) If the employer first applied for H–2 agricultural or H–2A temporary alien agricultural labor certification after 1977, such standards shall be no more than those normally required (at the time of the first application) by other employers for the activity in the area of intended employment, unless the OFLC Administrator approves a higher minimum.

(10) *Frequency of pay.* The employer shall state the frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least twice monthly whichever is more frequent).

(11) *Abandonment of employment; or termination for cause.* If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the SWA of such abandonment or termination, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b)(5)(ii) of this section, and that worker is not entitled to the ''three-fourths guarantee'' (see paragraph (b)(6) of this section).

(12) *Contract impossibility.* If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, hurricane, or other Act of God which makes the fulfillment of the contract impossible the employer may terminate the work contract. In the event of such termination of a contract, the employer shall fulfill the three-fourths guarantee at paragraph (b)(6) of this section for the time that has elapsed from the start of the work contract to its termination. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall:

(i) Offer to return the worker, at the employer's expense, to the place from which the worker disregarding intervening employment came to work for the employer,

(ii) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment, and

(iii) Notwithstanding whether the employment has been terminated prior to completion of 50 percent of the work contract period originally offered by the employer, pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker, without intervening employment, has come to work for the employer to the place of employment. Daily subsistence shall be computed as set forth in paragraph (b)(5)(i) of this section. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved.

(13) *Deductions.* The employer shall make those deductions from the worker's paycheck which are required by law. The job offer shall specify all deductions not required by law which the employer will make from the worker's paycheck. All deductions shall be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such cases, the job offer shall state that the worker will be reimbursed the full amount of such deductions upon the worker's completion of 50 percent of the worker's contract period. However, an employer subject to the Fair Labor Standards Act (FLSA) may not make deductions which will result in payments to workers of less than the Federal minimum wage permitted by the FLSA as determined by the Secretary at 29 CFR part 531.

(14) *Copy of work contract.* The employer shall provide to the worker, no later than on the day the work commences, a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by paragraphs (a) and (b) of this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and application for temporary alien agricultural labor certification shall be the work contract.

(c) *Appropriateness of required qualifications.* Bona fide occupational qualifications specified by an employer in a job offer shall be consistent with the normal and accepted qualifications required by non-H–2A employers in the same or comparable occupations and crops, and shall be reviewed by the OFLC Administrator for their appropriateness. The OFLC Administrator may require the employer to submit documentation to substantiate the appropriateness of the qualification specified in the job offer; and shall consider information offered by and may consult with representatives of the U.S. Department of Agriculture.

(d) *Positive recruitment plan.* The employer shall submit in writing, as a part of the application, the employer's plan for conducting independent, positive recruitment of U.S. workers as required by §§ 655.103 and 655.105(a) of this part. Such a plan shall include a description of recruitment efforts (if any) made prior to the actual submittal of the application. The plan shall describe how the employer will engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location(s)) no less than that of non-H–2A agricultural employers of comparable or smaller size in the area

of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H–2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall describe how it will make the same level of effort as non-H–2A agricultural employers and provide an override which is no less than that being provided by non-H–2A agricultural employers.

§ 655.103 Assurances.

As part of the temporary alien agricultural labor certification application, the employer shall include in the job offer a statement agreeing to abide by the conditions of this subpart. By so doing, the employer makes each of the following assurances:

(a) *Labor disputes.* The specific job opportunity for which the employer is requesting H–2A certification is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

(b) *Employment-related laws.* During the period for which the temporary alien agricultural labor certification is granted, the employer shall comply with applicable Federal, State, and local employment-related laws and regulations, including employment-related health and safety laws.

(c) *Rejections and terminations of U.S. workers.* No U.S. worker will be rejected for or terminated from employment for other than a lawful job-related reason, and notification of all rejections or terminations shall be made to the SWA.

(d) *Recruitment of U.S. workers.* The employer shall independently engage in positive recruitment until the foreign workers have departed for the employer's place of employment and shall cooperate with the ES System in the active recruitment of U.S. workers by:

(1) Assisting the ES System to prepare local, intrastate, and interstate job orders using the information supplied on the employer's job offer;

(2) Placing advertisements (in a language other than English, where the OFLC Administrator determines appropriate) for the job opportunities in newspapers of general circulation and/or on the radio, as required by the OFLC Administrator:

(i) Each such advertisement shall describe the nature and anticipated duration of the job opportunity; offer at least the adverse effect wage rate; give the ¾ guarantee; state that work tools, supplies and equipment will be provided by the employer; state that housing will also be provided, and that transportation and subsistence expenses to the worksite will be provided or paid by the employer upon completion of 50% of the work contract, or earlier, if appropriate; and

(ii) Each such advertisement shall direct interested workers to apply for the job opportunity at the appropriate office of the State Workforce Agency in their area;

(3) Cooperating with the ES System and independently contacting farm labor contractors, migrant workers and other potential workers in other areas of the State and/or Nation by letter and/or telephone; and

(4) Cooperating with the ES System in contacting schools, business and labor organizations, fraternal and veterans' organizations, and nonprofit organizations and public agencies such as sponsors of programs under the Job Training Partnership Act throughout the area of intended employment and in other potential labor supply areas in order to enlist them in helping to find U.S. workers.

(e) *Fifty-percent rule.* From the time the foreign workers depart for the employer's place of employment, the employer, except as provided for by § 655.106(e)(1) of this part, shall provide employment to any qualified, eligible U.S. worker who applies to the employer until 50% of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer shall offer to provide housing and the other benefits, wages, and working conditions required by § 655.102 of this part to any such U.S. worker and shall not treat less favorably than H–2A workers any U.S. worker referred or transferred pursuant to this assurance.

(f) *Other recruitment.* The employer shall perform the other specific recruitment and reporting activities specified in the notice from the OFLC Administrator required by § 655.105(a) of this part, and shall engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location) no less than that of non-H–2A agricultural employers of comparable or smaller size in the area of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H–2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall make the same level of effort as non-H–2A agricultural employers and shall provide an override which is no less than that being provided by non-H–2A agricultural employers. Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall not be required to provide meals through an override. The employer shall not be required to provide for housing through an override.

(g) *Retaliation prohibited.* The employer shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, and shall not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has with just cause:

(1) Filed a complaint under or related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA;

(2) Instituted or caused to be instituted any proceeding under or related to § 216 of the INA, or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA (8 U.S.C. 1186);

(3) Testified or is about to testify in any proceeding under or related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA; or

(5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA.

(h) *Fees.* The application shall include the assurance that fees will be paid in a timely manner, as follows:

(1) *Amount.* The fee for each employer receiving a temporary alien agricultural labor certification is $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, the fee for each employer-member receiving a temporary alien agricultural labor certification shall be $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. The joint employer association will not be

charged a separate fee. Fees shall be paid by a check or money order made payable to ''Department of Labor'', and are nonrefundable. In the case of employers of H–2A workers which are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H–2A workers under the application may be paid by one check or money order.

(2) *Timeliness.* Fees received by the OFLC Administrator within 30 calendar days after the date of the temporary alien agricultural labor certification determination are timely.

§ 655.104 Determinations based on acceptability of H–2A applications.

(a) *State Workforce Agency activities.* The State Workforce Agency (SWA), using the job offer portion of the H–2A application, shall promptly prepare a local job order and shall begin to recruit U.S. workers in the area of intended employment. The OFLC Administrator should notify the SWA by telephone no later than seven calendar days after the application was received by the OFLC Administrator if the application has been accepted for consideration. Upon receiving such notice or seven calendar days after the application is received by the SWA, whichever is earlier, the SWA shall promptly prepare an agricultural clearance order which will permit the recruitment of U.S. workers by the Employment Service System on an intrastate and interstate basis.

(b) *National Processing Center activities.* The OFLC Administrator, upon receipt of the H–2A application, shall promptly review the application to determine whether it is acceptable for consideration under the timeliness and adverse effect criteria of §§ 655.101–655.103 of this part. If the OFLC Administrator determines that the application does not meet the requirements of §§ 655.101–655.103, the OFLC Administrator shall not accept the application for consideration on the grounds that the availability of U.S. workers cannot be adequately tested because the benefits, wages and working conditions do not meet the adverse effect criteria; however, if the OFLC Administrator determines that the application is not timely in accordance with § 655.101 of this part and that neither the first-year employer provisions of § 655.101(c)(5) nor the emergency provisions of § 655.101(f) apply, the OFLC Administrator may determine not to accept the application for consideration because there is not sufficient time to test the availability of U.S. workers.

(c) *Rejected applications.* If the application is not accepted for consideration, the OFLC Administrator shall notify the applicant in writing (by means normally assuring next-day delivery) within seven calendar days of the date the application was received by the OFLC Administrator with a copy to the SWA. The notice shall:

(1) State all the reasons the application is not accepted for consideration, citing the relevant regulatory standards;

(2) Offer the applicant an opportunity for the resubmission within five calendar days of a modified application, stating the modifications needed in order for the OFLC Administrator to accept the application for consideration;

(3) Offer the applicant an opportunity to request an expedited administrative review of or a de novo administrative hearing before an administrative law judge of the nonacceptance; the notice shall state that in order to obtain such a review or hearing, the employer, within seven calendar days of the date of the notice, shall file by facsimile (fax), telegram, or other means normally assuring next-day delivery a written request to the Chief Administrative Law Judge of the Department of Labor (giving the address) and simultaneously serve a copy on the OFLC Administrator; the notice shall also state that the employer may submit any legal arguments which the employer believes will rebut the basis of the OFLC Administrator's action; and

(4) State that if the employer does not request an expedited administrative-judicial review or a de novo hearing before an administrative law judge within the seven calendar days no further consideration of the employer's application for temporary alien agricultural labor certification will be made by any DOL official.

(d) *Appeal procedures.* If the employer timely requests an expedited administrative review or de novo hearing before an administrative law judge pursuant to paragraph (c)(3) of this section, the procedures at § 655.112 of this part shall be followed.

(e) *Required modifications.* If the application is not accepted for consideration by the OFLC Administrator, but the OFLC Administrator's written notification to the applicant is not timely as required by § 655.101 of this part, the certification determination will not be extended beyond 20 calendar days before the date of need. The notice will specify that the OFLC Administrator's temporary alien agricultural labor certification determination will be made no later than 20 calendar days before the date of need, provided that the applicant submits the modifications to the application which are required by the OFLC Administrator within five calendar days and in a manner specified by the OFLC Administrator which will enable the test of U.S. worker availability to be made as required by § 655.101 of this part within the time available for such purposes.

§ 655.105 Recruitment period.

(a) *Notice of acceptance of application for consideration; required recruitment.* If the OFLC Administrator determines that the H–2A application meets the requirements of §§ 655.101–655.103 of this part, the OFLC Administrator shall promptly notify the employer (by means normally assuring next-day delivery) in writing with copies to the State agency. The notice shall inform the employer and the State agency of the specific efforts which will be expected from them during the following weeks to carry out the assurances contained in § 655.103 with respect to the recruitment of U.S. workers. The notice shall require that the job order be laced into intrastate clearance and into interstate clearance to such States as the OFLC Administrator shall determine to be potential sources of U.S. workers. The notice may require the employer to engage in positive recruitment efforts within a multi-State region of traditional or expected labor supply where the OFLC Administrator finds, based on current information provided by a State agency and such information as may be offered and provided by other sources, that there are a significant number of able and qualified U.S. workers who, if recruited, would likely be willing to make themselves available for work at the time and place needed. In making such a finding, the OFLC Administrator shall take into account other recent recruiting efforts in those areas and will attempt to avoid requiring employers to futilely recruit in areas where there are a significant number of local employers recruiting for U.S. workers for the same types of occupations. Positive recruitment is in addition to, and shall be conducted within the same time period as, the circulation through the interstate clearance system of an agricultural clearance order. The obligation to engage in such positive recruitment shall terminate on the date H–2A workers depart for the employer's place of work. In determining what positive recruitment shall be required, the OFLC Administrator will ascertain the normal recruitment practices of non-H–2A agricultural employers in the area and the kind and degree of recruitment efforts which the potential H–2A employer made to obtain H–2A workers.

The OFLC Administrator shall ensure that the effort, including the location(s) of the positive recruitment required of the potential H–2A employer, during the period after filing the application and before the date the H–2A workers depart their prior location to come to the place of employment, shall be no less than: (1) The recruitment efforts of non-H–2A agricultural employers of comparable or smaller size in the area of employment; and (2) the kind and degree of recruitment efforts which the potential H–2A employer made to obtain H–2A workers.

(b) *Recruitment of U.S. workers.* After an application for temporary alien agricultural labor certification is accepted for processing pursuant to paragraph (a) of this section, the OFLC Administrator shall provide overall direction to the employer and the SWA with respect to the recruitment of U.S. workers.

(c) *Modifications.* At any time during the recruitment effort, the OFLC Administrator may require modifications to a job offer when the OFLC Administrator determines that the job offer does not contain all the provisions relating to minimum benefits, wages, and working conditions, required by § 655.102(b) of this part. If any such modifications are required after an application has been accepted for consideration by the OFLC Administrator, the modifications must be made; however, the certification determination shall not be delayed beyond the 20 calendar days prior to the date of need as a result of such modification.

(d) *Final determination.* By 20 calendar days before the date of need specified in the application, except as provided for under §§ 655.101(c)(2) and 655.104(e) of this part for untimely modified applications, the OFLC Administrator, when making a determination of the availability of U.S. workers, shall also make a determination as to whether the employer has satisfied the recruitment assurances in § 655.103 of this part. If the OFLC Administrator concludes that the employer has not satisfied the requirements for recruitment of U.S. workers, the OFLC Administrator shall deny the temporary alien agricultural labor certification, and shall immediately notify the employer in writing with a copy to the SWA. The notice shall contain the statements specified in § 655.104(d) of this part.

(e) *Appeal procedure.* With respect to determinations by the OFLC Administrator pursuant to this section, if the employer timely requests an expedited administrative review or a de novo hearing before an administrative law judge, the procedures in § 655.112 of this part shall be followed.

§ 655.106 Referral of U.S. workers; determinations based on U.S. worker availability and adverse effect; activities after receipt of the temporary alien agricultural labor certification.

(a) *Referral of able, willing, and qualified eligible U.S. workers.* With respect to the referral of U.S. workers to job openings listed on a job order accompanying an application for temporary alien agricultural labor certification, no U.S. worker-applicant shall be referred unless such U.S. worker has been made aware of the terms and conditions of and qualifications for the job, and has indicated, by accepting referral to the job, that she or he meets the qualifications required and is able, willing, and eligible to take such a job.

(b)(1) *Determinations.* If the OFLC Administrator, in accordance with § 655.105 of this part, has determined that the employer has complied with the recruitment assurances and the adverse effect criteria of § 655.102 of this part, by the date specified pursuant to § 655.101(c)(2) of this part for untimely modified applications or 20 calendar days before the date of need specified in the application, whichever is applicable, the OFLC Administrator shall grant the temporary alien agricultural labor certification request for enough H–2A workers to fill the employer's job opportunities for which U.S. workers are not available. In making the temporary alien agricultural labor certification determination, the OFLC Administrator shall consider as available any U.S. worker who has made a firm commitment to work for the employer, including those workers committed by other authorized persons such as farm labor contractors and family heads. Such a firm commitment shall be considered to have been made not only by workers who have signed work contracts with the employer, but also by those whom the OFLC Administrator determines are likely to sign a work contract. The OFLC Administrator shall count as available any U.S. worker who has applied to the employer (or on whose behalf an application has been made), but who was rejected by the employer for other than lawful job-related reasons or who has not been provided with a lawful job-related reason for rejection by the employer, as determined by the OFLC Administrator. The OFLC Administrator shall not grant a temporary alien agricultural labor certification request for any H–2A workers if the OFLC Administrator determines that:

(i) Enough able, willing, and qualified U.S. workers have been identified as being available to fill all the employer's job opportunities;

(ii) The employer, since the time the application was accepted for consideration under § 655.104 of this part, has adversely affected U.S. workers by offering to, or agreeing to provide to, H–2A workers better wages, working conditions or benefits (or by offering to, or agreeing to impose on alien workers less obligations and restrictions) than those offered to U.S. workers;

(iii) The employer during the previous two-year period employed H–2A workers and the OFLC Administrator has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of a temporary alien agricultural labor certification with respect to the employment of U.S. or H–2A workers;

(iv) The employer has not complied with the workers' compensation requirements at § 655.102(b)(2) of this part; or

(v) The employer has not satisfactorily complied with the positive recruitment requirements specified by this subpart.

Further, the OFLC Administrator, in making the temporary alien agricultural labor certification determination, will subtract from any temporary alien agricultural labor certification the specific verified number of job opportunities involved which are vacant because of a strike or other labor dispute involving a work stoppage, or a lockout, in the occupation at the place of employment (and for which H–2A workers have been requested). Upon receipt by the OFLC Administrator of such labor dispute information from any source, the OFLC Administrator shall verify the existence of the strike, labor dispute, or lockout and any resulting vacancies prior to making such a determination.

(2) *Fees.* A temporary alien agricultural labor certification determination granting an application shall include a bill for the required fees. Each employer (except joint employer associations) of H–2A workers under the application for temporary alien agricultural labor certification shall pay in a timely manner a nonrefundable fee upon issuance of the temporary alien agricultural labor certification granting the application (in whole or in part), as follows:

(i) *Amount.* The fee for each employer receiving a temporary alien agricultural labor certification is $100 plus $10 for

each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, each employer-member receiving a temporary alien agricultural labor certification shall pay a fee of $100 plus $10 for each job opportunity for H–2A workers certified, provided that the fee to an employer for each temporary alien agricultural labor certification received shall be no greater than $1,000. The joint employer association will not be charged a separate fee. The fees shall be paid by check or money order made payable to ''Department of Labor''. In the case of employers of H–2A workers which are members of a joint employer association applying on their behalf, the aggregate fees for all employers of H–2A workers under the application may be paid by one check or money order.

(ii) *Timeliness.* Fees received by the OFLC Administrator no more than 30 calendar days after the date of the temporary alien agricultural labor certification determination are timely.

(c) Changes to temporary alien agricultural labor certifications; temporary alien agricultural labor certifications involving employer associations—(1) Changes. Temporary alien agricultural labor certifications are subject to the conditions and assurances made during the application process. Any changes in the level of benefits, wages, and working conditions an employer may wish to make at any time during the work contract period must be approved by the OFLC Administrator after written application by the employer, even if such changes have been agreed to by an employee. Temporary alien agricultural labor certifications shall be for the specific period of time specified in the employer's job offer, which shall be less than twelve months; shall be limited to the employer's specific job opportunities; and may not be transferred from one employer to another, except as provided for by paragraph (c)(2) of this section.

(2) *Associations*—(i) *Applications.* If an association is requesting a temporary alien agricultural labor certification as a joint employer, the temporary alien agricultural labor certification granted under this section shall be made jointly to the association and to its employer members. Except as provided in paragraph (c)(2)(iii) of this section, such workers may be transferred among its producer members to perform work for which the temporary alien agricultural labor certification was granted, provided the association controls the assignment of such workers and maintains a record of such assignments. All temporary alien agricultural labor certifications to associations may be used for the certified job opportunities of any of its members. If an association is requesting a temporary alien agricultural labor certification as a sole employer, the temporary alien agricultural labor certification granted pursuant to this section shall be made to the association only.

(ii) *Referrals and transfers.* For the purposes of complying with the ''fifty-percent rule'' at § 655.103(e) of this part, any association shall be allowed to refer or transfer workers among its members (except as provided in paragraph (c)(2)(iii) of this section), and an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(iii) *Ineligible employer-members.* Workers shall not be transferred or referred to an association's member, if that member is ineligible to obtain any or any additional workers, pursuant to § 655.110 of this part.

(3) *Extension of temporary alien agricultural labor certification*—(i) *Short-term extension.* An employer who seeks an extension of two weeks or less of the temporary alien agricultural labor certification shall apply for such extension to DHS. If DHS grants such an extension, the temporary alien agricultural labor certification shall be deemed extended for such period as is approved by DHS. No extension granted under this paragraph (c)(3)(i) shall be for a period longer than the original work contract period of the temporary alien agricultural labor certification.

(ii) *Long-term extension.* For extensions beyond the period which may be granted by DHS pursuant to paragraph (c)(3)(i) of this section, an employer, after 50 percent of the work contract period has elapsed, may apply to the OFLC Administrator for an extension of the period of the temporary alien agricultural labor certification, for reasons related to weather conditions or other external factors beyond the control of the employer (which may include unforeseen changes in market conditions), provided that the employer's need for an extension is supported in writing by the employer, with documentation showing that the extension is needed and could not have been reasonably foreseen by the employer. The OFLC Administrator shall grant or deny the request for extension of the temporary alien agricultural labor certification based on available information, and shall notify the employer of the decision on the request in writing. The OFLC Administrator shall not grant an extension where the total work contract period, including past temporary alien labor certifications for the job opportunity and extensions, would be 12 months or more, except in extraordinary circumstances. The OFLC Administrator shall not grant an extension where the temporary alien agricultural labor certification has already been extended by DHS pursuant to paragraph (c)(3)(i) of this section.

(d) *Denials of applications.* If the OFLC Administrator does not grant the temporary alien agricultural labor certification (in whole or in part) the OFLC Administrator shall notify the employer by means reasonably calculated to assure next-day delivery. The notification shall contain all the statements required in § 655.104(c) of this part. If a timely request is made for an administrative-judicial review or a de novo hearing by an administrative law judge, the procedures of § 655.112 of this part shall be followed.

(e) *Approvals of applications*—(1) *Continued recruitment of U.S. workers.* After a temporary agricultural labor certification has been granted, the employer shall continue its efforts to recruit U.S. workers until the actual date the H–2A workers depart for the employer's place of employment.

(i) Unless the SWA is informed in writing of a different date, the SWA shall deem the third day immediately preceding the employer's first date of need to be the date the H–2A workers depart for the employer's place of employment. The employer may notify the SWA in writing if the workers depart prior to that date.

(ii)(A) If the H–2A workers do not depart for the place of employment on or before the first date of need (or by the stated date of departure, if the SWA has been advised of a different date), the employer shall notify the SWA in writing (or orally, confirmed in writing) as soon as the employer knows that the workers will not depart by the first date of need, and in no event later than such date of need. At the same time, the employer shall notify the SWA of the workers' expected departure date, if known. No further notice is necessary if the workers depart by the stated date of departure.

(B) If the employer did not notify the SWA of the expected departure date pursuant to paragraph (e)(1)(ii)(A) of this section, or if the H–2A workers do not leave for the place of employment on or before the stated date of departure, the employer shall notify the SWA in

writing (or orally, confirmed in writing) as soon as the employer becomes aware of the expected departure date, or that the workers did not depart by the stated date and the new expected departure date, as appropriate.

(2) *Requirement for Active Job Order.* The employer shall keep an active job order on file until the ''50-percent rule'' assurance at § 655.103(e) of this part is met, except as provided by paragraph (f) of this section.

(3) *Referrals by ES System.* The ES system shall continue to refer to the employer U.S. workers who apply as long as there is an active job order on file.

(f) *Exceptions*—(1) *''Fifty-percent rule'' inapplicable to small employers.* The assurance requirement at § 655.103(e) of this part does not apply to any employer who:

(i) Did not, during any calendar quarter during the preceding calendar year, use more than 500 ''man-days'' of agricultural labor, as defined in section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)), and so certifies to the OFLC Administrator in the H–2A application; and

(ii) Is not a member of an association which has applied for a temporary alien agricultural labor certification under this subpart for its members; and

(iii) Has not otherwise ''associated'' with other employers who are applying for H–2A workers under this subpart, and so certifies to the OFLC Administrator.

(2) *Displaced H–2A workers.* An employer shall not be liable for payment under § 655.102(b)(6) of this part with respect to an H–2A worker whom the OFLC Administrator certifies is displaced due to compliance with § 655.103(e) of this part.

(g) *Withholding of U.S. workers prohibited*—(1) *Complaints.* Any employer who has reason to believe that a person or entity has willfully and knowingly withheld U.S. workers prior to the arrival at the job site of H–2A workers in order to force the hiring of U.S. workers under § 655.103(e) of this part may submit a written complaint to the SWA. The complaint shall clearly identify the person or entity whom the employer believes has withheld the U.S. workers, and shall specify sufficient facts to support the allegation (e.g., dates, places, numbers and names of U.S. workers) which will permit an investigation to be conducted by the SWA.

(2) *Investigations.* The SWA shall inform the OFLC Administrator by telephone that a complaint under the provisions of paragraph (g) of this section has been filed and shall immediately investigate the complaint. Such investigation shall include interviews with the employer who has submitted the complaint, the person or entity named as responsible for withholding the U.S. workers, and the individual U.S. workers whose availability has purportedly been withheld. In the event the SWA fails to conduct such interviews, the OFLC Administrator shall do so.

(3) *Reports of findings.* Within five working days after receipt of the complaint, the SWA shall prepare a report of its findings, and shall submit such report (including recommendations) and the original copy of the employer's complaint to the OFLC Administrator.

(4) *Written findings.* The OFLC Administrator shall immediately review the employer's complaint and the report of findings submitted by the local office, and shall conduct any additional investigation the OFLC Administrator deems appropriate. No later than 36 working hours after receipt of the employer's complaint and the local office's report, the OFLC Administrator shall issue written findings to the local office and the employer. Where the OFLC Administrator determines that the employer's complaint is valid and justified, the OFLC Administrator shall immediately suspend the application of § 655.103(e) of this part to the employer. Such suspension of § 655.103(e) of this part under these circumstances shall not take place, however, until the interviews required by paragraph (g)(2) of this section have been conducted. The OFLC Administrator's determination under the provisions of this paragraph (g)(4) shall be the final decision of the Secretary, and no further review by any DOL official shall be given to it.

(h) *Requests for new temporary alien agricultural labor certification determinations based on nonavailability of able, willing, and qualified U.S. workers*—(1) *Standards for requests.* If a temporary alien agricultural labor certification application has been denied (in whole or in part) based on the OFLC Administrator's determination of the availability of able, willing, and qualified U.S. workers, and, on or after 20 calendar days before the date of need specified in the temporary alien agricultural labor certification determination, such U.S. workers identified as being able, willing, qualified, and available are, in fact, not able, willing, qualified, or available at the time and place needed, the employer may request a new temporary alien agricultural labor certification determination from the OFLC Administrator. The OFLC Administrator shall expeditiously, but in no case later than 72 hours after the time a request is received, make a determination on the request.

(2) *Filing requests.* The employer's request for a new determination shall be made directly to the OFLC Administrator. The request may be made to the OFLC Administrator by telephone, but shall be confirmed by the employer in writing as required by paragraphs (h)(2)(i) or (ii) of this section.

(i) *Workers not able, willing, qualified, or eligible.* If the employer asserts that any worker who has been referred by the ES System or by any other person or entity is not an eligible worker or is not able, willing, or qualified for the job opportunity for which the employer has requested H–2A workers, the burden of proof is on the employer to establish that the individual referred is not able, willing, qualified, or eligible because of lawful job-related reasons. The employer's burden of proof shall be met by the employer's submission to the OFLC Administrator, within 72 hours of the OFLC Administrator's receipt of the request for a new determination, of a signed statement of the employer's assertions, which shall identify each rejected worker by name and shall state each lawful job-related reason for rejecting that worker.

(ii) *U.S. workers not available.* If the employer telephonically requests the new determination, asserting solely that U.S. workers are not available, the employer shall submit to the OFLC Administrator a signed statement confirming such assertion. If such signed statement is not received by the OFLC Administrator within 72 hours of the OFLC Administrator's receipt of the telephonic request for a new determination, the OFLC Administrator may make the determination based solely on the information provided telephonically and the information (if any) from the SWA.

(3) *National Processing Center review*—(i) *Expeditious review.* The OFLC Administrator expeditiously shall review the request for a new determination. The OFLC Administrator may request a signed statement from the SWA in support of the employer's assertion of U.S. worker nonavailability or referred U.S. workers not being able, willing, or qualified because of lawful job-related reasons.

(ii) *New determination.* If the OFLC Administrator determines that the employer's assertion of nonavailability is accurate and that no able, willing, or qualified U.S. worker has been refused or is being refused employment for other than lawful job-related reasons,

the OFLC Administrator shall, within 72 hours after receipt of the employer's request, render a new determination. Prior to making a new determination, the OFLC Administrator promptly shall ascertain (which may be through the ES System or other sources of information on U.S. worker availability) whether able, willing, and qualified replacement U.S. workers are available or can be reasonably expected to be present at the employer's establishment within 72 hours from the date the employer's request was received.

(iii) *Notification of new determination.* If the OFLC Administrator cannot identify sufficient able, willing, and qualified U.S. workers who are or who are likely to be available, the OFLC Administrator shall grant the employer's new determination request (in whole or in part) based on available information as to replacement U.S. worker availability. The OFLC Administrator's notification to the employer on the new determination shall be in writing (by means normally assuring next-day delivery), and the OFLC Administrator's determination under the provisions of this paragraph (h)(3) shall be the final decision of the Secretary, and no further review shall be given to an employer's request for a new H–2A determination by any DOL official. However, this does not preclude an employer from submitting subsequent requests for new determinations, if warranted, based on subsequent facts concerning purported nonavailability of U.S. workers or referred workers not being eligible workers or not able, willing, or qualified because of lawful job-related reasons.

§ 655.107 Adverse effect wage rates (AEWRs).

(a) *Computation and publication of AEWRs.* Except as otherwise provided in this section, the AEWRs for all agricultural employment (except for those occupations deemed inappropriate under the special circumstances provisions of § 655.93 of this part) for which temporary alien agricultural labor certification is being sought shall be equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey. The OFLC Administrator shall publish, at least once in each calendar year, on a date or dates to be determined by the OFLC Administrator, AEWRs for each State (for which USDA publishes regional data), calculated pursuant to this paragraph (a) as a notice or notices in the **Federal Register**.

(b) *Higher prevailing wage rates.* If, as the result of a State agency prevailing wage survey determination, the prevailing wage rate in an area and agricultural activity (as determined by the State agency survey and verified by the OFLC Administrator) is found to be higher that the AEWR computed pursuant to paragraph (a) of this section, the higher prevailing wage rate shall be offered and paid to all workers by employers seeking temporary alien agricultural labor certification for that agricultural activity and area.

(c) *Federal minimum wage rate.* In no event shall an AEWR computed pursuant to this section be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

§ 655.108 H–2A applications involving fraud or willful misrepresentation.

(a) *Referral for investigation.* If possible fraud or willful misrepresentation involving a temporary alien agricultural labor certification application is discovered prior to a final temporary alien agricultural labor certification determination or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the OFLC Administrator shall refer the matter to the DHS and DOL Office of the Inspector General for investigation. The OFLC Administrator shall continue to process the application and may issue a temporary alien agricultural labor certification.

(b) *Continued processing.* If a court finds an employer or agent not guilty of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the OFLC Administrator shall not deny the temporary alien agricultural labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) *Terminated processing.* If a court or the DHS determines that there was fraud or willful misrepresentation involving a temporary alien agricultural labor certification application, the application is thereafter invalid, consideration of the application shall be terminated and the OFLC Administrator shall return the application to the employer or agent with the reasons therefor stated in writing.

§ 655.110 Employer penalties for noncompliance with terms and conditions of temporary alien agricultural labor certifications.

(a) *Investigation of violations.* If, during the period of two years after a temporary alien agricultural labor certification has been granted (in whole or in part), the OFLC Administrator has reason to believe that an employer violated a material term or condition of the temporary alien agricultural labor certification, the OFLC Administrator shall, except as provided in paragraph (b) of this section, investigate the matter. If, after the investigation, the OFLC Administrator determines that a substantial violation has occurred, the OFLC Administrator, shall notify the employer that a temporary alien agricultural certification request will not be granted for the next period of time in a calendar year during which the employer would normally be expected to request a temporary alien agricultural labor certification, and any application subsequently submitted by the employer for that time period will not be accepted by the OFLC Administrator. If multiple or repeated substantial violations are involved, the OFLC Administrator's notice to the employer shall specify that the prospective denial of the temporary alien agricultural labor certification will apply not only to the next anticipated period for which a temporary alien agricultural labor certification would normally be requested, but also to any periods within the coming two or three years; two years for two violations, or repetitions of the same violations, and three years for three or more violations, or repetitions thereof. The OFLC Administrator's notice shall be in writing, shall state the reasons for the determinations, and shall offer the employer an opportunity to request an expedited administrative review or a de novo hearing before an administrative law judge of the determination within seven calendar days of the date of the notice. If the employer requests an expedited administrative review or a de novo hearing before an administrative law judge, the procedures in § 655.112 of this part shall be followed.

(b) *Employment Standards Administration investigations.* The OFLC Administrator may make the determination described in paragraph (a) of this section based on information and recommendations provided by the Employment Standards Administration, after an Employment Standards Administration investigation has been conducted in accordance with the Employment Standards Administration procedures, that an employer has not complied with the terms and conditions

of employment prescribed as a condition for a temporary alien agricultural labor certification. In such instances, the OFLC Administrator need not conduct any investigation of his/her own, and the subsequent notification to the employer and other procedures contained in paragraph (a) of this section will apply. Penalties invoked by the Employment Standards Administration for violations of temporary alien agricultural labor certification terms and conditions shall be treated and handled separately from sanctions available to the OFLC Administrator, and an employer's obligations for compliance with the Employment Standards Administration's enforcement penalties shall not absolve an employer from sanctions applied by ETA under this section (except as noted in paragraph (a) of this section).

(c) *Less than substantial violations*—(1) Requirement of special procedures. If, after investigation as provided for under paragraph (a) of this section, or an Employment Standards Administration notification as provided under paragraph (b) of this section, the OFLC Administrator determines that a less than substantial violation has occurred, but the OFLC Administrator has reason to believe that past actions on the part of the employer may have had and may continue to have a chilling or otherwise negative effect on the recruitment, employment, and retention of U.S. workers, the OFLC Administrator may require the employer to conform to special procedures before and after the temporary alien labor certification determination (including special on-site positive recruitment and streamlined interviewing and referral techniques) designed to enhance U.S. worker recruitment and retention in the next year as a condition for receiving a temporary alien agricultural labor certification. Such requirements shall be reasonable, and shall not require the employer to offer better wages, working conditions and benefits than those specified in § 655.102 of this part, and shall be no more than deemed necessary to assure employer compliance with the test of U.S. worker availability and adverse effect criteria of this subpart. The OFLC Administrator shall notify the employer in writing of the special procedures which will be required in the coming year. The notification shall state the reasons for the imposition of the requirements, state that the employer's agreement to accept the conditions will constitute inclusion of them as bona fide conditions and terms of a temporary alien agricultural labor certification, and shall offer the employer an opportunity to request an administrative review or a de novo hearing before an administrative law judge. If an administrative review or de novo hearing is requested, the procedures prescribed in § 655.112 of this part shall apply.

(2) *Failure to comply with special procedures.* If the OFLC Administrator determines that the employer has failed to comply with special procedures required pursuant to paragraph (c)(1) of this section, the OFLC Administrator shall send a written notice to the employer, stating that the employer's otherwise affirmative temporary alien agricultural labor certification determination will be reduced by twenty-five percent of the total number of H–2A aliens requested (which cannot be more than those requested in the previous year) for a period of one year. Notice of such a reduction in the number of workers requested shall be conveyed to the employer by the OFLC Administrator in the OFLC Administrator's written temporary alien agricultural labor certification determination required by § 655.101 of this part. The notice shall offer the employer an opportunity to request an administrative review or a de novo hearing before an administrative law judge. If an administrative review or de novo hearing is requested, the procedures prescribed in § 655.112 of this part shall apply, provided that if the administrative law judge affirms the OFLC Administrator's determination that the employer has failed to comply with special procedures required by paragraph (c)(1) of this section, the reduction in the number of workers requested shall be twenty-five percent of the total number of H–2A aliens requested (which cannot be more than those requested in the previous year) for a period of one year.

(d) *Penalties involving members of associations.* If, after investigation as provided for under paragraph (a) of this section, or notification from the Employment Standards Administration under paragraph (b) of this section, the OFLC Administrator determines that a substantial violation has occurred, and if an individual producer member of a joint employer association is determined to have committed the violation, the denial of temporary alien agricultural labor certification penalty prescribed in paragraph (a) shall apply only to that member of the association unless the OFLC Administrator determines that the association or other association member participated in, had knowledge of, or had reason to know of the violation, in which case the penalty shall be invoked against the association or other association member as well.

(e) *Penalties involving associations acting as joint employers.* If, after investigation as provided for under paragraph (a) of this section, or notification from the Employment Standards Administration under paragraph (b) of this section, the OFLC Administrator determines that a substantial violation has occurred, and if an association acting as a joint employer with its members is determined to have committed the violation, the denial of temporary alien agricultural labor certification penalty prescribed in paragraph (a) of this section shall apply only to the association, and shall not be applied to any individual producer member of the association unless the OFLC Administrator determines that the member participated in, had knowledge of, or reason to know of the violation, in which case the penalty shall be invoked against the association member as well.

(f) *Penalties involving associations acting as sole employers.* If, after investigation as provided for under paragraph (a) of this section, or notification from the Employment Standards Administration under paragraph (b) of this section, the OFLC Administrator determines that a substantial violation has occurred, and if an association acting as a sole employer is determined to have committed the violation, no individual producer member of the association shall be permitted to employ certified H–2A workers in the crop and occupation for which the H–2A workers had been previously certified for the sole employer association unless the producer member applies for temporary alien agricultural labor certification under the provisions of this subpart in the capacity of an individual employer/applicant or as a member of a joint employer association, and is granted temporary alien agricultural labor certification by the OFLC Administrator.

(g) *Types of violations*—(1) Substantial violation. For the purposes of this subpart, a substantial violation is one or more actions of commission or omission on the part of the employer or the employer's agent, with respect to which the OFLC Administrator determines:

(i)(A) That the action(s) is/are significantly injurious to the wages, benefits, or working conditions of 10 percent or more of an employer's U.S. and/or H–2A workforce; and that:

(*1*) With respect to the action(s), the employer has failed to comply with one or more penalties imposed by the

Employment Standards Administration for violation(s) of contractual obligations found by that agency (if applicable), or with one or more decisions or orders of the Secretary or a court pursuant to § 216 of the INA (8 U.S.C. 1186), this subpart, or 29 CFR part 501 (Employment Standards Administration enforcement of contractual obligations); or

(*2*) The employer has engaged in a pattern or practice of actions which are significantly injurious to the wages, benefits, or working conditions of 10 percent or more of an employer's U.S. and/or H–2A workforce;

(B) That the action(s) involve(s) impeding an investigation of an employer pursuant to § 216 of the INA (8 U.S.C. 1186), this subpart, or 29 CFR part 501 (Employment Standards Administration enforcement of contractual obligations);

(C) That the employer has not paid the necessary fee in a timely manner;

(D) That the employer is not currently eligible to apply for a temporary alien agricultural labor certification pursuant to § 655.210 of this part (failure of an employer to comply with the terms of a temporary alien agricultural labor certification in which the application was filed under subpart C of this part prior to June 1, 1987); or

(E) That there was fraud involving the application for temporary alien agricultural labor certification or that the employer made a material misrepresentation of fact during the application process; and

(ii) That there are no extenuating circumstances involved with the action(s) described in paragraph (g)(1)(i) of this section (as determined by the OFLC Administrator).

(2) Less than substantial violation. For the purposes of this subpart, a less than substantial violation is an action of commission or omission on the part of the employer or the employer's agent which violates a requirement of this subpart, but is not a substantial violation.

§ 655.111 Petition for higher meal charges.

(a) *Filing petitions.* Until a new amount is set pursuant to this paragraph (a), the OFLC Administrator may permit an employer to charge workers up to $6.58 for providing them with three meals per day, if the employer justifies the charge and submits to the OFLC Administrator the documentation required by paragraph (b) of this section. In the event the employer's petition for a higher meal charge is denied in whole or in part, the employer may appeal such denial. Such appeals shall be filed with the Chief Administrative Law Judge. Administrative law judges shall hear such appeals according to the procedures in 29 CFR part 18, except that the appeal shall not be considered as a complaint to which an answer is required. The decision of the administrative law judge shall be the final decision of the Secretary. Each year the maximum charge allowed by this paragraph (a) will be changed by the same percentage as the twelve-month percent change for the Consumer Price Index for all Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on the date of their publication by the OFLC Administrator as a notice in the **Federal Register**. However, an employer may not impose such a charge on a worker prior to the effective date contained in the OFLC Administrator's written confirmation of the amount to be charged.

(b) *Required documentation.* Documentation submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operation; and other costs directly related to the food service operation. Charges for transportation, depreciation, overhead and similar charges may not be included. Receipts and other cost records for a representative pay period shall be available for inspection by the OFLC Administrator for a period of one year.

§ 655.112 Administrative review and de novo hearing before an administrative law judge.

(a) *Administrative review*—(1) Consideration. Whenever an employer has requested an administrative review before an administrative law judge of a decision not to accept for consideration a temporary alien agricultural labor certification application, of the denial of a temporary alien agricultural labor certification, or of a penalty under § 655.110 of this part, the OFLC Administrator shall send a certified copy of the ETA case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge shall immediately assign an administrative law judge (which may be a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, but which shall hear and decide the appeal as set forth in this section) to review the record for legal sufficiency. The administrative law judge shall not remand the case and shall not receive additional evidence.

(2) *Decision.* Within five working days after receipt of the case file the administrative law judge shall, on the basis of the written record and after due consideration of any written submissions submitted from the parties involved or amici curiae, either affirm, reverse, or modify the OFLC Administrator's denial by written decision. The decision of the administrative law judge shall specify the reasons for the action taken and shall be immediately provided to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The administrative law judge's decision shall be the final decision of the Secretary and no further review shall be given to the temporary alien agricultural labor certification application or the temporary alien agricultural labor certification determination by any DOL official.

(b) *De novo hearing*—(1) Request for hearing; conduct of hearing. Whenever an employer has requested a de novo hearing before an administrative law judge of a decision not to accept for consideration a temporary alien agricultural labor certification application, of the denial of a temporary alien agricultural labor certification, or of a penalty under § 655.110 of this part, the OFLC Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by means normally assuring next-day delivery. The Chief Administrative Law Judge shall immediately assign an administrative law judge (which may be a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, but which shall hear and decide the appeal as set forth in this section) to conduct the de novo hearing. The procedures contained in 29 CFR part 18 shall apply to such hearings, except that:

(i) The appeal shall not be considered to be a complaint to which an answer is required,

(ii) The administrative law judge shall ensure that, at the request of the employer, the hearing is scheduled to take place within five working days after the administrative law judge's receipt of the case file, and

(iii) The administrative law judge's decision shall be rendered within ten working days after the hearing.

(2) *Decision.* After a de novo hearing, the administrative law judge shall either affirm, reverse, or modify the OFLC Administrator's determination, and the administrative law judge's decision shall be provided immediately to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The administrative law judge's decision shall be the final decision of the Secretary, and no further review shall be given to the temporary alien agricultural labor certification application or the temporary alien agricultural labor certification determination by any DOL official.

§ 655.113 Job Service Complaint System; enforcement of work contracts.

Complaints arising under this subpart may be filed through the Job Service Complaint System, as described in 20 CFR part 658, subpart E. Complaints which involve worker contracts shall be referred by the local office to the Employment Standards Administration for appropriate handling and resolution. See 29 CFR part 501. As part of this process, the Employment Standards Administration may report the results of its investigation to ETA for consideration of employer penalties under § 655.110 of this part or such other action as may be appropriate.

■ 7. Add subpart C to read as follows:

Subpart C—Labor Certification Process for Logging Employment and Non-H–2A Agricultural Employment

Sec.

655.200 General description of this subpart and definition of terms.
655.201 Temporary labor certification applications.
655.202 Contents of job offers.
655.203 Assurances.
655.204 Determinations based on temporary labor certification applications.
655.205 Recruitment period.
655.206 Determinations of U.S. worker availability and adverse effect on U.S. workers.
655.207 Adverse effect rates.
655.208 Temporary labor certification applications involving fraud or willful misrepresentation.
655.209 Invalidation of temporary labor certifications.
655.210 Failure of employers to comply with the terms of a temporary labor certification.
655.211 Petition for higher meal charges.
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655.215 Territory of Guam.

Subpart C—Labor Certification Process for Logging Employment and Non-H–2A Agricultural Employment

§ 655.200 General description of this subpart and definition of terms.

(a) This subpart applies to applications for temporary alien agricultural labor certification filed before June 1, 1987, and to applications for temporary alien labor certification for logging employment.

(b) An employer who desires to use foreign workers for temporary employment must file a temporary labor certification application including a job offer for U.S. workers with an appropriate State Workforce Agency. The employer should file an application a minimum of 80 days before the estimated date of need for the workers. If filed 80 days before need, sufficient time is allowed for the 60-day recruitment period required by the regulations and a determination by the OFLC Administrator as to the availability of U.S. workers 20 days before the date of need. Shortly after the application has been filed, the OFLC Administrator makes a determination as to whether or not the application has been filed in enough time to recruit U.S. workers and whether or not the job offer for U.S. workers offers wages and working conditions which will not adversely affect the wages and working conditions of similarly employed U.S. workers, as prescribed in the regulations in this subpart. If the application does not meet the regulatory wage and working condition standards, the OFLC Administrator shall deny the temporary labor certification application and offer the employer an administrative-judicial review of the denial by an Administrative Law Judge. If the application is not timely, the OFLC Administrator has discretion, as set forth in these regulations, to either deny the application or permit the process to proceed reasonably with the employer recruiting U.S. workers upon such terms as will accomplish the purposes of the INA and the DHS regulations. Where the application is timely and meets the regulatory standards, the State Workforce Agency, the employer, and the Department of Labor recruit U.S. workers for 60 days. At the end of the 60 days, the OFLC Administrator grants the temporary labor certification if the OFLC Administrator finds that (1) the employer has not offered foreign workers higher wages or better working conditions (or less restrictions) than that offered to U.S. workers, and (2) U.S. workers are not available for the employer's job opportunities. If the temporary labor certification is denied, the employer may seek an administrative-judicial review of the denial by an Administrative Law Judge as provided in these regulations. The Department of Labor thereafter advises the United States Citizenship and Immigration Services of the Department of Homeland Security (DHS) of approvals and denials of temporary labor certifications. The DHS may accept or reject this advice. 8 CFR 214.2(h)(3). The DHS makes the final decision as to whether or not to grant visas to the foreign workers. 8 U.S.C. 1184(a).

(c) *Definitions for terms used in this subpart.*

Administrative Law Judge means an official who is authorized to conduct administrative hearings.

Administrator, Office of Foreign Labor Certification (OFLC Administrator) means the primary official of the Office of Foreign Labor Certification or the OFLC Administrator's designee.

Adverse effect rate means the wage rate which the OFLC Administrator has determined must be offered and paid to foreign and U.S. workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. The OFLC Administrator may determine that the prevailing wage rate in the area and/or occupation is the adverse effect rate, if the use (or non-use) of aliens has not depressed the wages of similarly employed U.S. workers. The OFLC Administrator may determine that a wage rate higher than the prevailing wage rate is the adverse effect rate if the OFLC Administrator determines that the use of aliens has depressed the wages of similarly employed U.S. workers.

Agent means a legal person, such as an association of employers, which (1) is authorized to act as an agent of the employer for temporary labor certification purposes, and (2) which is not itself an employer, or a joint employer, as defined in this section.

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

Department of Homeland Security (DHS) through the United States Citizenship and Immigration Services (USCIS) makes the determination under the INA on whether or not to grant visa petitions to an alien seeking to perform temporary agricultural or logging work in the United States.

Employer means a person, firm, corporation or other association or organization (1) which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employees. An association of employers shall be considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with the employer member if it shares with the employer member one or more of the definitional indicia.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the Office of Foreign Labor (OFLC).

Job opportunity means a job opening for temporary, full-time employment at a place in the United States to which U.S. workers can be referred.

Office of Foreign Labor Certification (OFLC) means the organizational component within the ETA that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the INA concerning alien workers seeking admission to the United States in order to work under the Immigration and Nationality Act, as amended.

Secretary means the Secretary of Labor or the Secretary's designee.

State Workforce Agency (SWA) means the State employment service agency.

Temporary labor certification means the advice given by the Secretary of Labor to the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), pursuant to the regulations of that agency at 8 CFR 214.2(h)(3)(i), that (1) there are not sufficient U.S. workers who are qualified and available to perform the work and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

United States workers means any worker who, whether U.S. national, citizen or alien, is legally permitted to work permanently within the United States.

§ 655.201 Temporary labor certification applications.

(a)(1) An employer who anticipates a labor shortage of workers for agricultural or logging employment may request a temporary labor certification for temporary foreign workers by filing, or by having an agent file, in duplicate, a temporary labor certification application, signed by the employer, with a SWA in the area of intended employment.

(2) If the temporary labor certification application is filed by an agent, however, the agent may sign the application if the application is accompanied by a letter from each employer the agent represents, signed by the employer, which authorizes the agent to act on the employer's behalf and which states that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for the fulfillment of all legal requirements arising under this subpart.

(3) If an association of employers files the application, the association shall identify and submit documents to verify whether, in accordance with the definitions at § 655.200, it is: (i) The employer, (ii) a joint employer with its member employers, or (iii) the agent of its employer members.

(b) Every temporary labor certification application shall include:

(1) A copy of the job offer which will be used by the employer (or each employer) for the recruitment of both U.S. and foreign workers. The job offer for each employer shall state the number of workers needed by the employer, and shall be signed by the employer. The job offer shall comply with the requirements of §§ 655.202 and 653.108 of this chapter;

(2) The assurances required by § 655.203; and

(3) The specific estimated date of need of workers.

(c) The entire temporary labor certification application shall be filed with the SWA in duplicate and in sufficient time to allow the State agency to attempt to recruit U.S. workers locally and through the Employment Service intrastate and interstate clearance system for 60 calendar days prior to the estimated date of need. Section 655.206 requires the OFLC Administrator to grant or deny the temporary labor certification application by the end of the 60 calendar days, or 20 days from the estimated date of need, whichever is later. That section also requires the OFLC Administrator to offer employers an expedited administrative-judicial review in cases of denials of the temporary labor certification applications. Following an administrative-judicial review, the employer has a right to contest any denial before the DHS pursuant to 8 CFR 214.2(h)(3)(i). Finally, employers need time, after the temporary labor certification determination, to complete the process for bringing foreign workers into the United States, or to bring an appeal of a denial of an application for the labor certification. Therefore, employers should file their temporary labor certification applications at least 80 days before the estimated date of need specified in the application.

(d) Applications may be amended at any time prior to OFLC Administrator determination to increase the number of workers requested in the original application for labor certification by not more than 15 percent without requiring an additional recruitment period for U.S. workers. Requests for increases beyond 15 percent may be approved only when it is determined that, based on past experience, the need for additional workers could not be foreseen and that a critical need for the workers would exist prior to the expiration of an additional recruitment period.

(e) If a temporary labor certification application, or any part thereof, does not satisfy the time requirements specified in paragraph (c) of this section, and if the exception in paragraph (d) of this section does not apply, the SWA shall immediately send both copies directly to the appropriate OFLC Administrator. The OFLC Administrator may then advise the employer and the DHS in writing that the temporary labor certification cannot be granted because, pursuant to the regulations at paragraph (c) of this section, there is not sufficient time to test the availability of U.S. workers. The notice of denial to the employer shall inform the employer of the right to administrative-judicial review and to ultimately petition DHS for the admission of the aliens. In emergency situations, however, the OFLC Administrator may waive the time period specified in this section on behalf of employers who have not made use of temporary alien workers for the prior year's harvest or for other good and substantial cause, provided the OFLC Administrator has sufficient labor market information to make the labor certification determinations required by 8 CFR 214.2(h)(3)(i).

(Approved by the Office of Management and Budget under control number 1205–0015)

§ 655.202 Contents of job offers.

(a) So that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers, each

employer's job offer to U.S. workers must offer U.S. workers at least the same benefits which the employer is offering, intends to offer, or will afford, to temporary foreign workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's foreign workers. For example, if the employer intends to advance transportation costs to foreign workers either directly or indirectly (by having them paid by the foreign government involved), the employer must offer to advance the transportation costs of U.S. workers.

(b) Except when higher benefits, wages or working conditions are required by the provisions of paragraph (a) of this section, the OFLC Administrator has determined that, in order to protect similarly employed U.S. workers from adverse effect with respect to wages and working conditions, every job offer for U.S. workers must always include the following minimal benefit, wage, and working condition provisions:

(1) The employer will provide the worker with housing without charge to the worker. The housing will meet the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at part 654, subpart E of this chapter, whichever is applicable under the criteria of 20 CFR 654.401; except that, for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines. When it is the prevailing practice in the area of intended employment to provide family housing, the employer will provide such housing to such workers.

(2)(i) If the job opportunity is covered by the State workers' compensation law, the worker will be eligible for workers' compensation for injury and disease arising out of and in the course of worker's employment; or

(ii) If the job opportunity is not covered by the State workers' compensation law, the employer will provide at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment;

(3) The employer will provide without cost to the worker all tools, supplies and equipment required to perform the duties assigned and, if any of these items are provided by the worker, the employer will reimburse the worker for the cost of those so provided;

(4) The employer will provide the worker with three meals a day, except that where under prevailing practice or longstanding arrangement at the establishment workers prepare their meals, employers need furnish only free and convenient cooking and kitchen facilities. Where the employer provides the meals, the job offer shall state the cost to the worker for such meals. Until a new amount is set pursuant to this paragraph (b)(4), the cost shall not be more than $4.94 per day unless the OFLC Administrator has approved a higher cost pursuant to § 655.211 of this part. Each year the charge allowed by this paragraph (b)(4) will be changed by the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on their publication by the OFLC Administrator in the **Federal Register**.

(5)(i) The employer will provide or pay for the worker's transportation and daily subsistence from the place, from which the worker, without intervening employment, will come to work for the employer, to the place of employment, subject to the deductions allowed by paragraph (b)(13) of this section. The amount of the daily subsistence payment shall be at least as much as the amount the employer will charge the worker for providing the worker with three meals a day during employment;

(ii) If the worker completes the work contract period, the employer will provide or pay for the worker's transportation and daily subsistence from the place of employment to the place, from which the worker, without intervening employment, came to work for the employer, unless the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite; and

(iii) The employer will provide transportation between the worker's living quarters and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations;

(6)(i) The employer guarantees to offer the worker employment for at least three-fourths of the workdays of the total period during which the work contract and all extensions thereof are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the termination date specified in the work contract, or in its extensions if any. For purposes of this paragraph, a workday shall mean any period consisting of 8 hours of work time. An employer shall not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays. The work must be offered for at least three-fourths of the 8 hour workdays. (That is, $\frac{3}{4} \times$ (number of days $\times$ 8 hours.)) Therefore, if, for example, the contract contains 20 workdays, the worker must be offered employment for 120 hours during the 20 workdays. A worker may be offered more than 8 hours of work on a single workday. For purposes of meeting the guarantee, however, the worker may not be required to work for more than 8 hours per workday, or on the worker's Sabbath or Federal holidays;

(ii) If the worker will be paid on a piece rate basis, the employer will use the worker's average hourly earnings to calculate the amount due under the guarantee; and

(iii) Any hours which the worker fails to work when the worker has been offered an opportunity to do so pursuant to paragraph (b)(6)(i) of this section, and all hours of work actually performed (including voluntary work over 8 hours in a workday, or on the worker's Sabbath or Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met;

(7)(i) The employer will keep accurate and adequate records with respect to the workers' earnings, including field tally records, supporting summary payroll records, and records showing: The nature and amount of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with, and over and above, the guarantee); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay; the worker's earnings per pay period; and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered in accordance with the guarantee, the records will state the reason or reasons therefor;

(iii) The records, including field tally records and supporting summary payroll records, will be made available for inspection and copying by representatives of the Secretary of Labor, and by the worker and the worker's representatives; and

(iv) The employer will retain the records for not less than three years after the completion of the contract;

(8) The employer will furnish to the worker at or before each payday, in one or more written statements:

(i) The worker's total earnings for the pay period;

(ii) The worker's hourly rate or piece rate of pay;

(iii) The hours of employment which have been offered to the worker (broken out by offers in accordance with, and over and above, the guarantee);

(iv) The hours actually worked by the worker;

(v) An itemization of all deductions made from the worker's wages; and

(vi) If piece rates are used, the units produced daily;

(9)(i) If the worker will be paid by the hour, the employer will pay the worker at least the adverse effect rate; or

(ii)(A) If the worker will be paid on a piece rate basis, and the piece rate does not result at the end of the pay period in average hourly earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the adverse effect rate, the worker's pay will be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the adverse effect rate.

(B) If the employer who pays on a piece rate basis requires one or more minimum productivity standards of workers as a condition of job retention,

(*1*) Such standards shall be no more than those applied by the employer in 1977, unless the OFLC Administrator approves a higher minimum; or

(*2*) If the employer first applied for temporary labor certification after 1977, such standards shall be no more than those normally required (at the time of that first application) by other employers for the activity in the area of intended employment, unless the OFLC Administrator approves a higher minimum.

(10) The frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least biweekly whichever is more frequent);

(11) If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b)(5)(ii) of this section;

(12) If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire or other Act of God which makes the fulfillment of the contract impossible, and the OFLC Administrator so certifies, the employer may terminate the work contract. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the worker

(i) Will be returned to the place from which the worker, without intervening employment, came to work for the employer at the employer's expense; and

(ii) Will be reimbursed the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment borne directly or indirectly by the employer;

(13) The employer will make those deductions from the worker's paycheck which are required by law. The job offer shall specify all deductions, not required by law, which the employer will make from the worker's paycheck. All deductions shall be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer; in such cases, however, the job offer shall state that the worker will be reimbursed the full amount of such deductions upon the worker's completion of 50 percent of the worker's contract period; and

(14) The employer will provide the worker a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by paragraphs (a) and (b) of this section.

§ 655.203 Assurances.

As part of the temporary labor certification application, the employer shall include assurances, signed by the employer, that:

(a) The job opportunity is not:

(1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or

(2) At issue in a labor dispute involving a work stoppage;

(b) During the period for which the temporary labor certification is granted, the employer will comply with applicable Federal, State and local employment-related laws, including employment related health and safety laws;

(c) The job opportunity is open to all qualified U.S. workers without regard to race, color, national origin, sex, or religion, and is open to U.S. workers with handicaps who are qualified to perform the work. No U.S. worker will be rejected for employment for other than a lawful job related reason;

(d) The employer will cooperate with the employment service system in the active recruitment of U.S. workers until the foreign workers have departed for the employer's place of employment by;

(1) Allowing the employment service system to prepare local, intrastate and interstate job orders using the information supplied on the employer's job offer;

(2) Placing at least two advertisements for the job opportunities in local newspapers of general circulation.

(i) Each such advertisement shall describe the nature and anticipated duration of the job opportunity; offer at least the adverse effect wage rate; give the ¾ guarantee; state that work tools, supplies and equipment will be provided by the employer; state that housing will also be provided, and that transportation and subsistence expenses to the worksite will be provided or paid for by the employer;

(ii) Each advertisement shall direct interested workers to apply for the job opportunity at the appropriate office of the State Workforce Agency in their area;

(3) Cooperating with the employment service system in contacting farm labor contractors, migrant workers and other potential workers in other areas of the State and/or Nation by letter and/or telephone;

(4) Cooperating with the employment service system in contacting schools, business and labor organizations, fraternal and veterans organizations, and non-profit organizations and public agencies such as sponsors of programs under the Comprehensive Employment and Training Act, throughout the area of intended employment, in order to enlist them in helping to find U.S. workers; and

(5) If the employer, or an association of employers of which the employer is a member, intends to negotiate and/or contract with the Government of a foreign nation or any foreign association, corporation or organization in order to secure foreign workers, making the same kind and degree of efforts to secure U.S. workers;

(e) From the time the foreign workers depart for the employer's place of employment, the employer will provide employment to any qualified U.S. worker who applies to the employer until fifty percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide housing, and the other benefits, wages, and working conditions

required by § 655.202, to any such U.S. worker; and

(f) Performing the other specific recruitment activities specified in the notice from the OFLC Administrator required by § 655.205(a).

§ 655.204 Determinations based on temporary labor certification applications.

(a) Within two working days after the temporary labor certification application has been filed with it, the SWA shall mail the duplicate application directly to the appropriate OFLC Administrator.

(b) The SWA, using the job offer portion of its copy of the temporary labor certification application, shall promptly prepare a local job order and shall begin to recruit U.S. workers in the area of intended employment.

(c) The OFLC Administrator, upon receipt of the duplicate temporary labor certification application, shall promptly review the application to determine whether it meets the requirements of §§ 655.201–655.203 in order to determine whether the employer's application is (1) timely, and (2) contains offers of wages, benefits, and working conditions required to ensure that similarly employed U.S. workers will not be adversely affected. If the OFLC Administrator determines that the temporary labor certification application is not timely in accordance with § 655.201 of this subpart, the OFLC Administrator may promptly deny the temporary labor certification on the grounds that, in accordance with that regulation, there is not sufficient time to adequately test the availability of U.S. workers. If the OFLC Administrator determines that the application does not meet the requirements of §§ 655.202–655.203 because the wages, working conditions, benefits, assurances, job offer, etc. are not as required, the OFLC Administrator shall deny the certification on the grounds that the availability of U.S. workers cannot be adequately tested because the wages or benefits, etc. do not meet the adverse effect criteria.

(d) If the certification is denied, the OFLC Administrator shall notify the employer in writing of the determination, with a copy to the SWA. The notice shall:

(1) State the reasons for the denial, citing the relevant regulations; and

(2) Offer the employer an opportunity to request an expedited administrative-judicial review of the denial by an Administrative Law Judge. The notice shall state that in order to obtain such a review, the employer must, within five calendar days of the date of the notice, file by facsimile (fax), telegram, or other means normally assuring next day delivery a written request for such a review to the Chief Administrative Law Judge of the Department of Labor (giving the address) and simultaneously serve a copy on the OFLC Administrator. The notice shall also state that the employer's request for review should contain any legal arguments which the employer believes will rebut the basis of the OFLC Administrator's denial of certification; and

(3) State that, if the employer does not request an expedited administrative-judicial review before an Administrative Law Judge within the five days:

(i) The OFLC Administrator will advise the DHS that the certification cannot be granted, giving the reasons therefor, and that an administrative-judicial review of the denial was offered to the employer but not accepted, and enclosing, for DHS review, the entire temporary labor certification application file; and

(ii) The employer has the opportunity to submit evidence to the DHS to rebut the bases of the OFLC Administrator's determination in accordance with the DHS regulation at 8 CFR 214.2(h)(3)(i) but that no further review of the employer's application for temporary labor certification may be made by any Department of Labor official.

(e) If the employer timely requests an expedited administrative-judicial review pursuant to paragraph (d)(2) of this section, the procedures of § 655.212 shall be followed.

§ 655.205 Recruitment period.

(a) If the OFLC Administrator determines that the temporary labor certification application meets the requirements of §§ 655.201 through 655.203, the OFLC Administrator shall promptly notify the employer in writing, with copies to the SWA. The notice shall inform the employer and the SWA of the specific efforts which will be expected from them during the following weeks to carry out the assurances contained in § 655.203 with respect to the recruitment of U.S. workers. The notice shall require that the job order be placed both into intrastate clearance and into interstate clearance to such States as the OFLC Administrator shall determine to be potential sources of U.S. workers.

(b) Thereafter, OFLC Administrator, shall provide overall direction to the employer and the SWA with respect to the recruitment of U.S. workers.

(c) By the 60th day of the recruitment period, or 20 days before the date of need specified in the application, whichever is later, the OFLC Administrator, when making a determination of the availability of U.S. workers, shall also make a determination as to whether the employer has satisfied the recruitment assurances in § 655.203. If the OFLC Administrator concludes that the employer has not satisfied the requirement for recruitment of U.S. workers, the OFLC Administrator shall deny the temporary labor certification, and shall immediately notify the employer in writing with a copy to the State agency. The notice shall contain the statements specified in § 655.204(d).

(d) If the employer timely requests an expedited administrative-judicial review before an Administrative Law Judge, the procedures in § 655.212 shall be followed.

§ 655.206 Determinations of U.S. worker availability and adverse effect on U.S. workers.

(a) If the OFLC Administrator, in accordance with § 655.205 has determined that the employer has complied with the recruitment assurances, the OFLC Administrator, by 60th day of the recruitment period, or 20 days before the date of need specified in the application, whichever is later, shall grant the temporary labor certification for enough aliens to fill the employer's job opportunities for which U.S. workers are not available. In making this determination the OFLC Administrator shall consider as available for a job opportunity any U.S. worker who has made a firm commitment to work for the employer, including those workers committed by other authorized persons such as farm labor contractors and family heads; such a firm commitment shall be considered to have been made not only by workers who have signed work contracts with the employer, but also by those whom the OFLC Administrator determines are very likely to sign such a work contract. The OFLC Administrator shall also count as available any U.S. worker who has applied to the employer (or on whose behalf an application has been made), but who was rejected by the employer for other than lawful job-related related reasons unless the OFLC Administrator determines that:

(1) Enough qualified U.S. workers have been found to fill all the employer's job opportunities; or

(2) The employer, since the time of the initial determination under § 655.204, has adversely affected U.S. workers by offering to, or agreeing to provide to, alien workers better wages, working conditions, or benefits (or by offering or agreeing to impose on alien workers less obligations and restrictions) than that offered to U.S. workers.

(b)(1) Temporary labor certifications shall be considered subject to the conditions and assurances made during the application process. Temporary labor certifications shall be for a limited duration such as for ''the 1978 apple harvest season'' or ''until November 1, 1978'', and they shall never be for more than eleven months. They shall be limited to the employer's specific job opportunities; therefore, they may not be transferred from one employer to another.

(2) If an association of employers is itself the employer, as defined in § 655.200, certifications shall be made to the association and may be used for any of the job opportunities of its employer members and workers may be transferred among employer members.

(3) If an association of employers is a joint employer with its employer members, as defined in § 655.200, the certification shall be made jointly to the association and the employer members. In such cases workers may be transferred among the employer members provided the employer members and the association agree in writing to be jointly and severally liable for compliance with the temporary labor certification obligations set forth in this subpart.

(c) If the OFLC Administrator denies the temporary labor certification in whole or part, the OFLC Administrator shall notify the employer in writing by means normally assuring next-day delivery. The notice shall contain all of the statements required in § 655.204(d). If a timely request is made for an administrative-judicial review by an Administrative Law Judge, the procedures of § 655.212 shall be followed.

(d)(1) After a temporary labor certification has been granted, the employer shall continue its efforts to actively recruit U.S. workers until the foreign workers have departed for the employer's place of employment. The employer, however, must keep an active job order on file until the assurance at § 655.203(e) is met.

(2) The State Workforce Agency (SWA) system shall continue to actively recruit and refer U.S. workers as long as there is an active job order on file.

§ 655.207 Adverse effect rates.

(a) Except as otherwise provided in this section, the adverse effect rates for all agricultural and logging employment shall be the prevailing wage rates in the area of intended employment.

(b)(1) For agricultural employment (except sheepherding) in the States listed in paragraph (b)(2) of this section, and for Florida sugarcane work, the adverse effect rate for each year shall be computed by adjusting the prior year's adverse effect rate by the percentage change (from the second year previous to the prior year) in the U.S. Department of Agriculture's (USDA's) average hourly wage rates for field and livestock workers (combined) based on the USDA Quarterly Wage Survey. The OFLC Administrator shall publish, at least once in each calendar year, on a date or dates he shall determine, adverse effect rates calculated pursuant to this paragraph (b) as a notice or notices in the **Federal Register**.

(2) *List of States.* Arizona, Colorado, Connecticut, Florida (other than sugar cane work), Maine, Maryland, Massachusetts, New Hamsphire, New York, Rhode Island, Texas, Vermont, Virginia, and West Virginia. Other States may be added as appropriate.

(3) *Transition.* Notwithstanding paragraphs (b)(1) and (2) of this section, the 1986 adverse effect rate for agricultural employment (except sheepherding) in the following States, and for Florida sugarcane work, shall be computed by adjusting the 1981 adverse effect rate (computed pursuant to 20 CFR 655.207(b)(1), 43 FR 10317; March 10, 1978) by the percentage change between 1980 and 1985 in the U.S. Department of Agriculture annual average hourly wage rates for field and livestock workers (combined) based on the USDA Quarterly survey: The States listed at 20 CFR 655.207(b)(2) (1985).

(c) In no event shall an adverse effect rate for any year be lower than the hourly wage rate published in 29 U.S.C. 206(a)(1) and currently in effect.

§ 655.208 Temporary labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a temporary labor certification application is discovered prior to a final temporary labor certification determination, or if it is learned that the employer or agent (with respect to an application) is the subject of a criminal indictment or information filed in a court, the OFLC Administrator shall refer the matter to the DHS for investigation and shall notify the employer or agent in writing of this referral. The OFLC Administrator shall continue to process the application and may issue a qualified temporary labor certification.

(b) If a court finds an employer or agent innocent of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an employer or agent, the OFLC Administrator shall not deny the temporary labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) If a court or the DHS determines that there was fraud or willful misrepresentation involving a temporary labor certification application, the application shall be deemed invalidated, processing shall be terminated, and the application shall be returned to the employer or agent with the reasons therefor stated in writing.

§ 655.209 Invalidation of temporary labor certifications.

After issuance, temporary labor certifications are subject to invalidation by the DHS upon a determination, made in accordance with that agency's procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the temporary labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the OFLC Administrator, the OFLC Administrator shall notify the DHS in writing.

§ 655.210 Failure of employers to comply with the terms of a temporary labor certification.

(a) If, after the granting of a temporary labor certification, the OFLC Administrator has probable cause to believe that an employer has not lived up to the terms of the temporary labor certification, the OFLC Administrator shall investigate the matter. If the OFLC Administrator concludes that the employer has not complied with the terms of the labor certification, the OFLC Administrator may notify the employer that it will not be eligible to apply for a temporary labor certification in the coming year. The notice shall be in writing, shall state the reasons for the determination, and shall offer the employer an opportunity to request a hearing within 30 days of the date of the notice. If the employer requests a hearing within the 30-day period, the OFLC Administrator shall follow the procedures set forth at § 658.421(i)(1), (2) and (3) of this chapter. The procedures contained in §§ 658.421(j), 658.422 and 658.423 of this chapter shall apply to such hearings.

(b) No other penalty shall be imposed by the employment service on such an employer other than as set forth in paragraph (a) of this section.

§ 655.211 Petition for higher meal charges.

(a) Until a new amount is set pursuant to this paragraph (a), the OFLC Administrator may permit an employer to charge workers up to $6.17 for providing them with three meals per day, if the employer justifies the charge

and submits to the OFLC Administrator the documentary evidence required by paragraph (b) of this section. A denial in whole or in part shall be reviewable as provided in § 655.212 of this part. Each year the maximum charge allowed by this paragraph (a) will be changed by the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on their publication by the OFLC Administrator in the **Federal Register**.

(b) Evidence submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operations; other costs directly related to the food service operation. Charges for transportation, depreciation, overhead, and similar charges may not be included. Receipts and other cost records for a representative pay period shall be available for inspection by the Secretary's representatives for a period of one year.

§ 655.212 Administrative-judicial reviews.

(a) Whenever an employer has requested an administrative-judicial review of a denial of an application or a petition in accordance with §§ 655.204(d), 655.205(d), 655.206(c), or 655.211, the Chief Administrative Law Judge shall immediately assign an Administrative Law Judge to review the record for legal sufficiency, and the OFLC Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by means normally assuring next day delivery. The Administrative Law Judge shall not have authority to remand the case and shall not receive additional evidence. Any countervailing evidence advanced after decision by the OFLC Administrator shall be subject to provisions of 8 CFR 214.2(h)(3)(i).

(b) The Administrative Law Judge, within five working days after receipt of the case file shall, on the basis of the written record and due consideration of any written memorandums of law submitted, either affirm, reverse or modify the OFLC Administrator's denial by written decision. The decision of the Administrative Law Judge shall specify the reasons for the action taken and shall be immediately provided to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The Administrative Law Judge's decision shall be the final decision of the Department of Labor and no further review shall be given to the temporary labor certification determination by any Department of Labor official.

§ 655.215 Territory of Guam.

Subpart C of this part does not apply to temporary employment in the Territory of Guam, and the Department of Labor does not certify to the United States Citizenship and Immigration Services of the Department of Homeland Security (DHS) the temporary employment of nonimmigrant aliens under H–2B visas in the Territory of Guam. Pursuant to DHS regulations, that function is performed by the Governor of Guam, or the Governor's designated representative within the Territorial Government.

Title 29—Labor

■ 8. Redesignate part 501 as part 502 and suspend newly designated Part 502.

■ 9. Add part 501 to read as follows:

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 216 OF THE IMMIGRATION AND NATIONALITY ACT

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Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

Subpart A—General Provisions

§ 501.0 Introduction.

These regulations cover the enforcement of all contractual obligations provisions applicable to the employment of H–2A workers under section 216 of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA). These regulations are also applicable to the employment of other workers hired by employers of H–2A workers in the occupations and for the period of time set forth in the job order approved by ETA as a condition for granting H–2A certification, including any extension thereof. Such other workers hired by H–2A employers are hereafter referred to as engaged in corresponding employment.

§ 501.1 Purpose and scope.

(a) Statutory standard. Section 216(a) of the INA provides that—

(1) A petition to import an alien as an H–2A worker (as defined in subsection (i)(2) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to

perform the labor or services involved in the petition, and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(b) *Role of the ETA, USES.* The issuance and denial of labor certification under section 216 of the INA has been delegated by the Secretary of Labor to the Employment and Training Administration (ETA). In general, matters concerning the obligations of an employer of H–2A workers related to the labor certification process are administered and enforced by ETA. Included within ETA's jurisdiction are such issues as whether U.S. workers were available, whether positive recruitment was conducted, whether there was a strike or lockout, the methodology for establishing adverse effect wage rates, whether workers' compensation insurance was provided, whether employment was offered to U.S. workers for up to 50 percent of the contract period and other similar matters. The regulations pertaining to the issuance and denial of labor certification for temporary alien workers by the Employment and Training Administration are found in title 20 CFR part 655.

(c) *Role of ESA, Wage and Hour Division.* Section 216(g)(2) of the INA provides that—

[T]he Secretary of Labor is authorized to take such actions including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

Certain investigation, inspection and law enforcement functions to carry out the provisions of section 216 of the INA have been delegated by the Secretary of Labor to the Employment Standards Administration (ESA), Wage and Hour Division. In general, matters concerning the obligations of the work contract between an employer of H–2A workers and the H–2A workers and other workers in corresponding employment hired by H–2A employers are enforced by ESA. Included within the enforcement responsibility of ESA, Wage and Hour Division are such matters as the payment of required wages, transportation, meals and housing provided during the employment. The Wage and Hour Division has the responsibility to carry out investigations, inspections and law enforcement functions and in appropriate instances impose penalties, seek injunctive relief and specific performance of contractual obligations, including recovery of unpaid wages.

(d) *Effect of regulations.* The amendments to the INA made by title III of the IRCA apply to petitions and applications filed on and after June 1, 1987. Accordingly, the enforcement functions carried out by the Wage and Hour Division under the INA and these regulations apply to the employment of any H–2A worker and any other workers hired by H–2A employers in corresponding employment as the result of any petition or application filed with the Department on and after June 1, 1987.

§ 501.2 Coordination of intake between DOL agencies.

Complaints received by ETA, or any State Employment Service Agency regarding contractual H–2A labor standards between the employer and the employee will be immediately forwarded to the appropriate Wage and Hour office for appropriate action under these regulations.

§ 501.3 Discrimination prohibited.

No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(a) Filed a complaint under or related to section 216 of the INA or these regulations;

(b) Instituted or caused to be instituted any proceedings related to section 216 of the INA or these regulations;

(c) Testified or is about to testify in any proceeding under or related to section 216 of the INA or these regulations;

(d) Exercised or asserted on behalf of himself or others any right or protection afforded by section 216 of the INA or these regulations.

(e) Consulted with an employee of a legal assistance program or an attorney on matters related to section 216 of the INA (8 U.S.C. 1186), or to this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA.

Allegations of discrimination in employment against any person will be investigated by Wage and Hour. Where Wage and Hour has determined through investigation that such allegations have been substantiated appropriate remedies may be sought. Wage and Hour may assess civil money penalties, seek injunctive relief, and/or seek additional remedies necessary to make the employee whole as a result of the discrimination, as appropriate, and may recommend to ETA that labor certification of any violator be denied in the future.

§ 501.4 Waiver of rights prohibited.

No person shall seek to have an H–2A worker, or other worker employed in corresponding employment by an H–2A employer, waive rights conferred under section 216 of the INA or under these regulations. Such waiver is against public policy. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

§ 501.5 Investigation authority of Secretary.

(a) *General.* The Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate and, in connection therewith, enter and inspect such places and vehicles (including housing) and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance with contractual obligations under section 216 of the INA or these regulations.

(b) *Failure to permit investigation.* Where any person using the services of an H–2A worker does not permit an investigation concerning the employment of his or her workers the Wage and Hour Division shall report such occurrence to ETA and may recommend denial of future labor certifications to such person. In addition, Wage and Hour may take such action as may be appropriate, including the seeking of an injunction or assessing civil money penalties, against any person who has failed to permit Wage and Hour to make an investigation.

(c) *Confidential investigation.* The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(d) *Report of violations.* Any person may report a violation of the work contract obligations of section 216 of the INA or these regulations to the Secretary by advising any local office of the Employment Service of the various States, any office of ETA, any office of the Wage and Hour Division, ESA, U.S. Department of Labor, or any other authorized representative of the Secretary. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, ESA, for the area in which the

reported violation is alleged to have occurred.

§ 501.6 Prohibition on interference with Department of Labor officials.

No person shall interfere with any official of the Department of Labor assigned to perform an investigation, inspection or law enforcement function pursuant to the INA and these regulations during the performance of such duties. Wage and Hour will seek such action as it deems appropriate, including an injunction to bar any such interference with an investigation and/or assess a civil money penalty therefor. In addition Wage and Hour may refer a report of the matter to ETA with a recommendation that the person's labor certification be denied in the future. (Federal statutes which prohibit persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 1114.)

§ 501.7 Accuracy of information, statements, data.

Information, statements and data submitted in compliance with provisions of the Act or these regulations are subject to title 18, section 1001, of the U.S. Code, which provides:

Section 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 501.10 Definitions.

The definitions in paragraphs (a) through (d) are set forth for purposes of this part. In addition, the definitions in paragraphs (e) through (v) are promulgated at 20 CFR 655.100(b), are utilized herein, and are incorporated and set forth for information purposes.

(a) *Act and INA* mean the Immigration and Nationality Act, as amended (8 U.S.C. 1101 *et seq.*), with reference particularly to section 216.

(b) *Administrative Law Judge (ALJ)* means a person within the Department of Labor Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

(c) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under this part.

(d) *Work contract* means all the material terms and conditions of employment relating to wages, hours, working conditions, and other benefits, including those terms and conditions required by the applicable regulations in subpart B of 20 CFR part 655, Labor Certification Process for Temporary Agricultural Employment in the United States, and those contained in the Application for Alien Employment Certification and job offer under that subpart, which contract between the employer and the worker may be in the form of a separate written document. In the absence of a separate written work contract incorporating the required terms and conditions of employment, entered into between the employer and the worker, the work contract at a minimum shall be the terms of the job order included in the application for temporary labor certification, and shall be enforced in accordance with these regulations.

(e) *Adverse effect wage rate (AEWR)* means the wage rate which the Director has determined must be offered and paid, as a minimum, to every H–2A worker and every U.S. worker for a particular occupation and/or area in which an employer employs or seeks to employ an H–2A worker so that the wages of similarly employed U.S. workers will not be adversely affected.

(f) *Agricultural labor or services.* Pursuant to section 101(a)(15)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)), ''agricultural labor or services'' is defined for the purposes of this subpart as either ''agricultural labor'' as defined and applied in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) or ''agriculture'' as defined and applied in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)). An occupation included in either statutory definition shall be ''agricultural labor or services'', notwithstanding the exclusion of that occupation from the other statutory definition. For informational purposes, the statutory provisions are quoted below.

(1) *Agricultural labor.* Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) quoted as follows, defines the term ''agricultural labor'' to include all service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) Services performed in the employ of the owner or tenant or other operator of a farm, in connection with the operation, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term farm includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(2) *Agriculture.* Section 203(f) of title 29, United States Code, (section 3(f) of the Fair Labor Standards Act of 1938), quoted as follows, defines agriculture to include:

(f) * * * farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g)

of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(3) *Agricultural commodity.* Section 1141j(g) of title 12, United States Code, (section 15(g) of the Agricultural Marketing Act, as amended) quoted as follows, defines agricultural commodity to include:

(g) * * * in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine, and gum rosin, as defined in section 92 of title 7.

(iv) *Gum rosin.* Section 92 of title 7, United States Code, quoted as follows, defines gum spirits of turpentine and gum rosin as—

(c) *Gum spirits of turpentine* means spirits of turpentine made from gum (oleoresin) from a living tree.

(g) *Gum rosin* means rosin remaining after the distillation of gum spirits of turpentine.

(g) *Of a temporary or seasonal nature*—(1) *On a seasonal or other temporary basis.* For the purposes of this subpart of a temporary or seasonal nature means on a seasonal or other temporary basis, as defined in the Employment Standards Administration's Wage and Hour Division's regulation at 29 CFR 500.20 under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). For informational purposes § 500.20 as it pertains to seasonal or temporary basis is quoted below.

(2) *MSPA definition.* For information purposes, the definition of on a seasonal or other temporary basis, as set forth at § 500.20 of this title, is provided below:

On a seasonal or other temporary basis means:

Labor is performed on a seasonal basis, where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.

A worker is employed on other temporary basis where he is employed for a limited time only or the performance is contemplated for a particular piece of work, usually of short duration. Generally, employment, which is contemplated to continue indefinitely, is not temporary.

On a seasonal or other temporary basis does not include the employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year round basis.

On a seasonal or other temporary basis does not include the employment of any worker who is living at his permanent place of residence, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for his employer and is not primarily employed to do field work.

(3) *Temporary.* For the purpose of this subpart, the definition of ''temporary'' in paragraph (c)(2)(ii) of this section refers to any job opportunity covered by this subpart where the employer needs a worker for a position, either temporary or permanent, for a limited period of time, which shall be for less than one year, unless the original temporary alien agricultural labor certification is extended based on unforeseen circumstances, pursuant to § 655.106(c)(3) of this title.

(h) *DOL* means the U.S. Department of Labor.

(i) *Employer* means a person, firm, corporation or other association or organization which suffers or permits a person to work and (1) which has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ workers at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee. An association of employers shall be considered the sole employer if it alone has the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with an employer member if it shares with the employer member one or more of the definitional indicia.

(j) *Employment Service (ES)* and *Employment Service (ES) System* mean, collectively, the USES, the State agencies, the local offices, and the ETA regional offices.

(k) *Employment Standards Administration* means the agency within the Department of Labor (DOL), which includes the Wage and Hour Division, and which is charged with the carrying out certain functions of the Secretary under the INA.

(l) *Employment and Training Administration (ETA)* means the agency within the Department of Labor (DOL) which includes the U.S. Employment Service (USES).

(m) *H–2A worker* means any nonimmigrant alien admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(n) *Immigration and Naturalization Service (INS)* means the component of the U.S. Department of Justice which makes the determination under the INA on whether or not to grant visa petitions to employers seeking H–2A workers to perform temporary agricultural work in the United States.

(o) *Job offer* means the offer made by an employer or potential employer of H–2A workers to both U.S. and H–2A workers describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits.

(p) *Secretary* means the Secretary of Labor or the Secretary's designee.

(q) *State agency* means the State employment service agency designated under section 4 of the Wagner-Peyser Act to cooperate with the USES in the operation of the ES System.

(r) *Solicitor of Labor* means the Solicitor, U.S. Department of Labor, and includes employees of the Office of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this subpart.

(s) *Temporary alien agricultural labor certification* means the certification made by the Secretary of Labor with respect to an employer seeking to file with INS a visa petition to import an alien as an H–2A worker, pursuant to sections 101(a)(15)(H)(ii)(a), 214 (a) and (c), and 216 of the INA that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services involved in the petition, and (2) the employment of the alien in such agricultural labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184 (a) and (c), and 1186).

(t) *United States Employment Service (USES)* means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices and carrying out certain functions of the Secretary under the INA.

(u) *United States (U.S.) worker* means any worker who, whether a U.S. national, a U.S. citizen, or an alien, is legally permitted to work in the job opportunity within the United States (as

defined at section 101(a)(38) of the INA (8 U.S.C. 1101(a)(38)).

(v) *Wages* means all forms of cash remuneration to a worker by an employer in payment for personal services.

Subpart B—Enforcement of Work Contracts

§ 501.15 Enforcement.

The investigations, inspections and law enforcement functions to carry out the provisions of section 216 of the INA, as provided in these regulations for enforcement by the Wage and Hour Division, pertain to the employment of any H–2A worker and any other worker employed in corresponding employment by an H–2A employer. Such enforcement includes those work contract provisions as defined in § 501.10(d). The work contract enforced includes the employment benefits which must be stated in the job offer, as prescribed in 20 CFR 655.102.

§ 501.16 General.

Whenever the Secretary believes that the H–2A provisions of the INA or these regulations have been violated such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(a) Impose denial of labor certification against any person for a violation of the H–2A obligations of the INA or the regulations. ETA shall make all determinations regarding the issuance or denial of labor certification. ESA shall make all determinations regarding the enforcement functions listed in paragraphs (b) through (d) of this section.

(b) Institute appropriate administrative proceedings, including the recovery of unpaid wages, the enforcement of any other contractual obligations and the assessment of a civil money penalty against any person for a violation of the H–2A work contract obligations of the Act or these regulations.

(c) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief, including the withholding of unpaid wages, to restrain violation of the H–2A provisions of the Act or these regulations by any person.

(d) Petition any appropriate District Court of the United States for specific performance of contractual obligations.

§ 501.17 Concurrent actions.

The taking of any one of the actions referred to above shall not be a bar to the concurrent taking of any other action authorized by the H–2A provisions of the Act and these regulations, or the regulations of 20 CFR part 655.

§ 501.18 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under the Act.

(b) The Solicitor of Labor, through the authorized representatives shall represent the Administrator and the Secretary in all administrative hearings under the H–2A provisions of the Act and these regulations.

§ 501.19 Civil money penalty assessment.

(a) A civil money penalty may be assessed by the Administrator for each violation of the work contract or these regulations.

(b) In determining the amount of penalty to be assessed for any violation of the work contract as provided in the H–2A provisions of the Act or these regulations the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations of the H–2A provisions of the Act and these regulations;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made in good faith to comply with the H–2A provisions of the Act and these regulations;

(5) Explanation of person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated the H–2A provisions of the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for violation of the work contract will not exceed $1,000 for each violation committed against each worker. A civil money penalty for discrimination or interference with Wage and Hour investigative authority will not exceed $1,000 for each such act of discrimination or interference.

§ 501.20 Enforcement of Wage and Hour investigative authority.

Sections 501.5 through 501.7 of this part prescribe the investigation authority conferred upon the Wage and Hour Division for the purpose of enforcing the contractual obligations. These sections indicate the actions which may be taken upon failure to permit or interference with an investigation. No person shall interfere with any employee of the Secretary who is exercising or attempting to exercise this investigative or enforcement authority. As stated in §§ 501.5, 501.6 and in 501.19 of this part, a civil money penalty may be assessed for each failure to permit an investigation or interference therewith, and other appropriate relief may be sought. In addition Wage and Hour shall report each such occurrence to ETA and may recommend to ETA denial of future labor certifications. The taking of any one action shall not bar the taking of any additional action.

§ 501.21 Referral of findings to ETA.

Where Wage and Hour finds violations Wage and Hour shall so notify the appropriate representative of ETA and shall forward appropriate information, including investigative information to such representative for review and consideration.

§ 501.22 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Administrator, by an Administrative Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the U.S. Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of ''Wage and Hour Division, Labor.'' The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

Subpart C—Administrative Proceedings

§ 501.30 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to impose an assessment of civil money penalties and which may be applied to the enforcement of contractual obligations, including the collection of unpaid wages due as a result of any violation of the H–2A provisions of the Act or of these regulations. Except with respect to the imposition of civil money penalties, the Secretary may, in his discretion, seek enforcement action in Federal

court without resort to any administrative proceedings.

Procedures Relating to Hearing

§ 501.31 Written notice of determination required.

Whenever the Administrator determines to assess a civil money penalty or to proceed administratively to enforce contractual obligations, including the recovery of unpaid wages, the person against whom such action is taken shall be notified in writing of such determination.

§ 501.32 Contents of notice.

The notice required by § 501.31 shall:

(a) Set forth the determination of the Administrator including the amount of any unpaid wages due or contractual obligations required and the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Administrator shall become final and unappealable.

(d) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 501.33.

§ 501.33 Request for hearing.

(a) Any person desiring to request an administrative hearing on a determination referred to in § 501.32 shall make such request in writing to the official who issued the determination, at the Wage and Hour Division address appearing on the determination notice, no later than thirty (30) days after issuance of the notice referred to in § 501.32.

(b) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the official who issued the determination, at the Wage and Hour Division address appearing on the determination notice, within the time set forth in paragraph (a) of this section. For the affected person's protection, if the request is by mail, it should be by certified mail.

Rules of Practice

§ 501.34 General.

Except as specifically provided in these regulations, the ''Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges'' established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this part.

§ 501.35 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.

§ 501.36 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In the Matter of __, Respondent.

(b) For the purposes of such administrative proceedings the Administrator shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing

§ 501.37 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 501.33 the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under these regulations or 29 CFR part 18.

(b) A copy of the Order of Reference, together with a copy of these regulations, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 501.38 Notice of docketing.

Upon receipt of an Order of Reference, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the docketing of the matter and shall set the time and place of the hearing. The date of the hearing shall be not more than 60 days from the date on which the Order of Reference was filed.

§ 501.39 Service upon attorneys for the Department of Labor—number of copies.

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

Procedures Before Administrative Law Judge

§ 501.40 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

Post-Hearing Procedures

§ 501.41 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, within 60 days after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the Secretary in person or by certified mail. The decision when served by the Administrative Law Judge shall constitute the final order of the Administrator unless the Secretary, as provided for in § 501.42 below determines to review the decision.

Review of Administrative Law Judge's Decision

§ 501.42 Procedures for initiating and undertaking review.

(a) A respondent, the Administrator or any other party wishing review of the decision of an Administrative Law Judge shall, within 30 days of the decision of the Administrative Law Judge, petition the Secretary to review the decision. Copies of the petition shall be served on all parties and on the Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the Administrative Law Judge shall be deemed the final agency action.

(b) Whenever the Secretary either on the Secretary's own motion or by acceptance of a party's petition, determines to review the decision of an Administrative Law Judge, a notice of the same shall be served upon the Administrative Law Judge and upon all parties to the proceeding in person or by certified mail.

§ 501.43 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice pursuant to § 501.42 of these regulations, the Office of Administrative Law Judges shall, promptly forward a copy of the complete hearing record to the Secretary.

§ 501.44 Additional information, if required.

Where the Secretary has determined to review such decision and order, the Secretary shall notify each party of:

(a) The issue or issues raised;

(b) The form in which submission shall be made (i.e., briefs, oral argument, etc.); and the time within which such presentation shall be submitted.

§ 501.45 Final decision of the Secretary.

The Secretary's final decision shall be issued within 90 days from the notice granting the petition and served upon all parties and the administrative law judge, in person or by certified mail.

Record

§ 501.46 Retention of official record.

The official record of every completed administrative hearing provided by these regulations shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 501.47 Certification.

Upon receipt of a complaint seeking review of a decision issued pursuant to this part filed in a U.S. District Court, after the administrative remedies have been exhausted, the Chief Administrative Law Judge shall promptly index, certify and file with the appropriate U.S. District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

PART 780—EXEMPTIONS APPLICABLE TO AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS UNDER THE FAIR LABOR STANDARDS ACT

■ 10. The authority citation for part 780 is revised to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219.

§ 780.115 [Redesignated as § 780.159 and Suspended]

■ 11. Redesignate § 780.115 as § 780.159 and suspend newly designated § 780.159.

■ 12. Add § 780.115 to read as follows:

§ 780.115 Forest products.

Trees grown in forests and the lumber derived therefrom are not ''agricultural or horticultural commodities.'' Christmas trees, whether wild or planted, are also not so considered. It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within section 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.160 through 780.164 which discuss the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute ''agriculture.'' For a discussion of the exemption in section 13(a)(13) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see part 788 of this chapter.

§ 780.201 [Redesignated as § 780.215 and Suspended]

■ 13. Redesignate § 780.201 as § 780.215 and suspend newly designated § 780.215.

■ 14. Add § 780.201 to read as follows:

§ 780.201 Meaning of ''forestry or lumbering operations.''

The term ''forestry or lumbering operations'' refers to the cultivation and management of forests, the felling and trimming of timber, the cutting, hauling, and transportation of timber, logs, pulpwood, cordwood, lumber, and like products, the sawing of logs into lumber or the conversion of logs into ties, posts, and similar products, and similar operations. It also includes the piling, stacking, and storing of all such products. The gathering of wild plants and of wild or planted Christmas trees are included. (See the related discussion in §§ 780.205 through 780.209 and in

part 788 of this chapter which considers the section 13(a)(13) exemption for forestry or logging operations in which not more than eight employees are employed.) ''Wood working'' as such is not included in ''forestry'' or ''lumbering'' operations. The manufacture of charcoal under modern methods is neither a ''forestry'' nor ''lumbering'' operation and cannot be regarded as ''agriculture.''

§ 780.205 [Redesignated as § 780.216 and Suspended]

■ 15. Redesignate § 780.205 as § 780.216 and suspend newly designated § 780.216.

■ 16. Add § 780.205 to read as follows:

§ 780.205 Nursery activities generally.

The employees of a nursery who are engaged in the following activities are employed in ''agriculture'':

(a) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees), and shrubs, vines, and flowers;

(b) Handling such plants from propagating frames to the field;

(c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

§ 780.208 [Redesignated as § 780.217 and Suspended]

■ 17. Redesignate § 780.208 as § 780.217 and suspend newly designated § 780.217.

■ 18a. Add § 780.208 to read as follows:

§ 780.208 Forest and Christmas tree activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. The planting, tending, and cutting of Christmas trees do not constitute farming operations. If such operations on forest products are within section 3(f), they must qualify under the second part of the definition dealing with incidental practices. (See § 780.201.)

PART 788—FORESTRY OR LOGGING OPERATIONS IN WHICH NOT MORE THAN EIGHT EMPLOYEES ARE EMPLOYED

■ 18b. The authority citation for part 788 continues to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

§ 788.10 [Redesignated as § 788.18 and Suspended]

■ 19. Redesignate § 788.10 as § 788.18 and suspend newly designated § 788.18.

■ 20. Add § 788.10 to read as follows:

§ 788.10 ''Preparing * * * other forestry products.''

As used in the exemption, ''other forestry products'' mean plants of the forest and the natural properties or substances of such plants and trees. Included among these are decorative greens such as holly, ferns and Christmas trees, roots, stems, leaves, Spanish moss, wild fruit, and brush. Gathering and preparing such forestry products as well as transporting them to the mill, processing plant, railroad, or other transportation terminal are among the described operations. Preparing such forestry products does not include operations which change the natural physical or chemical condition of the products or which amount to extracting as distinguished from gathering, such as shelling nuts, or mashing berries to obtain juices.

Signed in Washington, DC, this 20th day of May, 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

Shelby Hallmark,

Acting Assistant Secretary, Employment Standards Administration.

[FR Doc. E9–12436 Filed 5–28–09; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2009 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of Adverse Effect Wage Rates, allowable charges for meals, and maximum travel subsistence reimbursement for 2009.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Notice to announce: The 2009 Adverse Effect Wage Rates (AEWRs) for employers seeking to employ temporary or seasonal nonimmigrant foreign workers to perform agricultural labor or services (H–2A workers) or logging (H–2B logging workers); the allowable charges for 2009 that employers seeking H–2A workers, and H–2B logging workers may levy upon their workers when three meals a day are provided by the employer; and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2009. AEWRs are the minimum wage rates the Department has determined must be offered and paid by employers of H–2A workers or H–2B logging workers to U.S. and foreign workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. 20 CFR 655.100(b) and 655.200(b).[1] These rates will apply to applications for H–2A labor certification and H–2B logging certifications filed after June 29, 2009.

DATES: *Effective Date:* June 29, 2009.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security may not approve an employer's petition for the admission of H–2A nonimmigrant temporary agricultural workers or H–2B nonimmigrant temporary logging workers into the United States unless the petitioner has received from the Department an H–2A or H–2B labor certification, as appropriate. Approved labor certifications attest: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1101(a)(15)(H)(ii)(b), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5) and (6).

The Department's regulations that will be in effect on and after June 29, 2009 require employers to offer and pay their U.S., H–2A, and H–2B logging workers no less than the appropriate hourly AEWR in effect at the time the work is performed. 20 CFR 655.102(b)(9) and 655.202(b)(9); *see also* 20 CFR 655.107, 20 CFR 655.207.[2]

On February 13, 2008, the Department proposed significant changes to the H–2A program, including using an alternate methodology for calculating the AEWR. 73 FR 8538, February 13, 2008. The December 2008 Rule, incorporating the new AEWR methodology, became effective January 17, 2009. 73 FR 77110, Dec. 18, 2008. As a result of concerns regarding implementation, the Department has suspended the December 2008 Rule in order to provide the Department with an opportunity to review and reconsider the new requirements in light of issues that have arisen since the publication of the December 2008 Rule. The final rule suspending the December 2008 Rule is found elsewhere in this issue of the **Federal Register**. In order to ensure continued functioning of the H–2A program during the period of suspension, the Department has reinstated the previous regulations that were in effect prior to January 17, 2009. *Id.* Accordingly, the calculation of the AEWR, and the obligation to pay it, will revert to that prior regulation for applications filed after the effective date of the Final Suspension of the December 2008 H–2A Final Rule.

A. Adverse Effect Wage Rates for 2009

AEWRs are the minimum wage rates which must be offered and paid to U.S. and foreign workers by employers of H–2A workers or H–2B logging workers. 20 CFR 655.100(b) and 655.200(b). Employers of H–2A workers must pay the highest of (i) the AEWR in effect at the time the work is performed; (ii) the applicable prevailing wage; or (iii) the statutory Federal or State minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9) Currently, because U.S. Department of Agriculture (USDA) regional surveys are not available for logging occupations, employers of H–2B logging workers must pay at least the prevailing wage in the area of intended employment, which is deemed to be the AEWR. 20 CFR 655.202(b)(9); 20 CFR 655.207(a).

Therefore, except as otherwise provided in 20 CFR part 655, subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstance provisions of 20 CFR 655.93) for which temporary H–2A certification is being sought is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the USDA. 20 CFR 655.107(a). USDA does not provide data on Alaska; H–2A employers in that state must accordingly pay the highest of the following three wage sources; the applicable prevailing wage, the statutory Federal or State minimum wage.

The regulation at 20 CFR 655.107(a) requires the Administrator of the Office of Foreign Labor Certification to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** Notice. Accordingly, the 2009 AEWRs for agricultural work performed by U.S. and H–2A workers on or after the effective date of this Notice are set forth in the table below:

TABLE—2009 ADVERSE EFFECT WAGE RATES

State	2009 AEWRs
Alabama	$8.77
Arizona	9.82

[1] The references to 20 CFR 100 *et seq.* are to the H–2A and logging regulations in place prior to January 17, 2009. As discussed in section A, these regulations have been reinstated in the Final Suspension Rule published on May 29, 2009 which suspends the Final Rule published December 18, 2008, 73 FR 77110 (the ''December 2008 Rule''). These regulations are being used by the Department to avoid a regulatory vacuum in light of the suspension of the December 2008 Rule for a period of 9 months, and give rise to the need for this Notice.

[2] For additional information about the AEWR, see the preamble of the Final Rule, 54 FR 28037–28047, Jul. 5, 1989, which explains in great depth the purpose and history of AEWR, the Department's policy in setting AEWR, and the AEWR computation methodology at 20 CFR 655.107(a). *See also* 52 FR 20496, 20502–20505, Jun. 1, 1987. For more information concerning recent regulatory actions giving rise to the publication of this AEWR, see Section A, *infra.*

TABLE—2009 ADVERSE EFFECT WAGE RATES—Continued

State	2009 AEWRs
Arkansas	8.92
California	10.16
Colorado	9.88
Connecticut	10.20
Delaware	9.50
Florida	9.08
Georgia	8.77
Hawaii	11.06
Idaho	9.64
Illinois	10.45
Indiana	10.45
Iowa	10.77
Kansas	10.39
Kentucky	9.41
Louisiana	8.92
Maine	10.20
Maryland	9.50
Massachusetts	10.20
Michigan	10.63
Minnesota	10.63
Mississippi	8.92
Missouri	10.77
Montana	9.64
Nebraska	10.39
Nevada	9.88
New Hampshire	10.20
New Jersey	9.50
New Mexico	9.82
New York	10.20
North Carolina	9.34
North Dakota	10.39
Ohio	10.45
Oklahoma	9.27
Oregon	10.12
Pennsylvania	9.50
Rhode Island	10.20
South Carolina	8.77
South Dakota	10.39
Tennessee	9.41
Texas	9.27
Utah	9.88
Vermont	10.20
Virginia	9.34
Washington	10.12
West Virginia	9.41
Wisconsin	10.63
Wyoming	9.64

For all logging employment, the AEWR shall be the prevailing wage rate in the area of intended employment, and the employer is required to pay at least that rate. 20 CFR 655.207(a).

B. Allowable Meal Charges

Among the minimum benefits and working conditions which the Department requires employers to offer their U.S., H–2A, and H–2B logging workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4); 655.202(b)(4). When the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

The Department has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts that H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to H–2B logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year, the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are adjusted by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food). The OFLC may permit an employer to charge workers no more than the higher maximum amount set forth in 20 CFR 655.111(a) and 655.211(a), as applicable, for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the 12-month percent change in the CPI–U for Food. The program's regulations require the Department to make the annual adjustments and to publish a Notice in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by agricultural and logging employers for providing three meals daily to their U.S. and foreign workers. The 2008 rates were published in the **Federal Register** at 73 FR 10288, Feb. 26, 2008.

The Department has determined the percentage change between December of 2007 and December of 2008 for the CPI–U for Food was 5.6 percent. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2009, are as follows: (1) Charges under 20 CFR 655.102(b)(4) and 655.202(b)(4) shall be no more than $10.45 per day, unless OFLC has approved a higher charge pursuant to 20 CFR 655.111 or 655.211; (2) charges under 20 CFR 655.111 and 655.211 shall be no more than $12.96 per day, if the employer justifies the charge and submits to OFLC the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily travel subsistence expense, for which a worker is entitled to reimbursement, is equivalent to the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.102(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department established the maximum meals component of the standard Continental United States (CONUS) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Part.301, Appendix A. The CONUS meal component is now $39.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per 41 CFR 301–11.101(a). Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $19.50. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed in Washington, DC this 20th day of May, 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–12434 Filed 5–28–09; 8:45 am]

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May 29, 2009

Part IV

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2006–STD–0125]

RIN 1904–AB58

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and notice of public meeting.

SUMMARY: The Energy Policy and Conservation Act prescribes energy conservation standards for certain commercial and industrial equipment and requires the U.S. Department of Energy (DOE) to administer an energy conservation program for this equipment. In this notice, DOE is proposing new energy conservation standards for refrigerated bottled or canned beverage vending machines. DOE is also announcing a public meeting on its proposed standards.

DATES: DOE will hold a public meeting on Wednesday, June 17, 2009 from 9 a.m. to 4 p.m. in Washington, DC. DOE must receive requests to speak at the public meeting no later than 4 p.m. Wednesday, June 3, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m. Wednesday, June 10, 2009.

DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than July 28, 2009. See section VII, ''Public Participation,'' of this NOPR for details. Hada Flowers

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Any comments submitted must identify the NOPR for beverage vending machines, and provide docket number EERE–2006–STD–0125 and/or RIN number 1904–AB58. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: beveragevending.rulemaking@ee.doe.gov.* Include docket number EERE–2006–STD–0125 and/or RIN 1904–AB58 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. 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., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192, *Charles.Llenza@ee.doe.gov* or Ms. Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507, *Francine.Pinto@hq.doe.gov.*

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I. Summary of the Proposed Rule

The Energy Policy and Conservation Act (EPCA), as amended, specifies that any new or amended energy conservation standard the U.S. Department of Energy (DOE) prescribes for the equipment covered by this notice shall 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 (v)) Further, the new or amended standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and (v)) In accordance with these and other statutory criteria discussed in this notice, DOE proposes to adopt new energy conservation standards for refrigerated bottled or canned beverage vending machines, hereafter referred to as ''beverage vending machines.'' The proposed standards, shown in Table I–1, would apply to all beverage vending machines manufactured 3 years after publication of the final rule establishing the energy conservation standards and offered for sale in the United States. (42 U.S.C. 6295(v)(4))[1]

[1] This provision was redesignated by EISA, section 316(d)(1), as 42 U.S.C. 6295(v)(3).

TABLE I–1—PROPOSED STANDARD LEVELS

Equipment class*	Proposed standard level** Maximum Daily Energy Consumption (MDEC) *kWh/day*
A	$0.055 \times V + 2.56^{\dagger}$
B	$0.073 \times V + 3.16^{\dagger\dagger}$

* See section IV.A.2 of this notice for a discussion of equipment classes.

** ''V'' is the refrigerated volume (ft^3) of the refrigerated bottled or canned beverage vending machine, as measured by the American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) HRF–1–2004, ''Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.''

† Trial Standard Level (TSL) 6.

†† TSL 3.

DOE's analyses indicate that the proposed energy conservation standards, trial standard level (TSL) 6 for Class A equipment and TSL 3 for Class B equipment would save a significant amount of energy—an estimated 0.098 quadrillion British thermal units (Btu), or quads, of cumulative energy over 30 years (2012 to 2042). See section V.A for a detailed description of TSLs. The economic impacts on commercial customers (*i.e.,* the average life-cycle cost (LCC) savings) are positive for both equipment classes.

The cumulative national net present value (NPV) of the proposed standards from 2012 to 2042 ranges from $0.105 billion (at a 7-percent discount rate) to $0.273 billion (at a 3-percent discount rate) in 2008$. This is the estimated total value of future operating cost savings minus the estimated increased equipment costs, discounted to 2008$. The benefits and costs of the standards can also be expressed in terms of annualized 2008$ values over the forecast period 2012 through 2042. Using a 7-percent discount rate for the annualized cost analysis, the cost of the standards is estimated to be $11.1 million per year in increased equipment and installation costs, while the annualized benefits are expected to be $20.5 million per year in reduced equipment operating costs. Using a 3-percent discount rate, the annualized cost of the standards is expected to be $9.4 million per year, while the annualized benefits of the standards are expected to be $21.4 million per year. (See section V.B.3 for additional details.) If DOE adopts the proposed standards, it expects manufacturers will lose 22.9 to 25.3 percent of the industry net present value (INPV), which is approximately $13.2 to $14.6 million.

DOE estimates that the proposed standards will have environmental benefits leading to reductions in greenhouse gas emissions (*i.e.,* cumulative (undiscounted) emission reductions) of 5.14 million tons (Mt) of carbon dioxide (CO_2) from 2012 to 2042.[2] Most of the energy saved is electricity. In addition, DOE expects the energy savings from the proposed standards to eliminate the need for approximately 46 megawatts (MW) of electric generating capacity by 2042. These results reflect DOE's use of energy price projections from the U.S. Energy Information Administration (EIA)'s *Annual Energy Outlook 2009* (*AEO2009*).[3] DOE also estimated that the net present value benefits of the proposed standards from reducing CO_2 emissions would range from $0 to $49.6 million using a 7-percent discount rate and $0 to $96.4 million using a 3-percent discount rate, although the method for developing these estimates is now under review. The net present value benefits of the proposed standards from reducing oxides of nitrogen (NO_X) emissions would range from $109,000 to $1.13 million using a 7-percent discount rate and from $187,000 to $1.93 million using a 3-percent discount rate. Finally, the net present value benefits of the proposed standards from reducing Hg emissions would range from $0 to $1.0 million using a 7-percent discount rate and $0 to $1.73 million using a 3-percent discount rate.

DOE proposes that the standards in today's NOPR for Class A and Class B beverage vending machines represent the maximum improvement in energy efficiency that is technologically feasible and economically justified. DOE proposes that the benefits to the Nation of the proposed standards (energy savings, commercial customer average LCC savings, national NPV increase, and emission reductions) outweigh the costs (loss of manufacturer INPV). Furthermore, DOE proposes that the proposed standards are technologically feasible because the technologies required to achieve these levels already exist.

DOE requests comment and further data or information on whether the

[2] Additionally, the standards would result in emissions reductions for nitrogen oxides (NO_X) or generate a similar amount of NO_X emissions allowance credits in areas where such emissions are subject to regulatory or voluntary emissions caps.

[3] DOE intends to use EIA's *AEO2009* to generate the results for the final rule. The *AEO2009* Early Release contains reference case energy price forecasts, which shows higher commercial electricity prices at the national level compared with the *AEO2008* on a real (inflation adjusted) basis. If these early release energy prices remain unchanged in the final release, then incorporation of the *AEO2008* forecasts would likely result in reduced payback periods, greater life-cycle cost savings, and greater national net present value for the proposed standards.

energy savings and related benefits of TSL 6 outweigh the costs, including potential manufacturer impacts. DOE seeks comment on the magnitude of the estimated decline in INPV at TSL 6, and what impact this level could have on industry parties, including small businesses. DOE is particularly interested in receiving comments, views, and further data or information from interested parties concerning: (1) Why the private market has not been able to capture the energy benefits proposed in TSL 6; (2) whether and to what extent parties estimate they will be able to transfer costs of implementing TSL 6 on to consumers; (3) whether and to what extent parties estimate distributional chain intermediaries (such as wholesalers or bottlers) will be able to absorb TSL 6 implementation costs and in turn transfer these costs to on-site consumers, who ultimately benefit from the energy gains associated with the proposed standard.

II. Introduction

A. Overview

DOE proposes to set energy conservation standards for beverage vending machines at the levels shown in Table I–1. The proposed standards would apply to equipment manufactured 3 years after publication of the final rule establishing the energy conservation standards and offered for sale in the United States. DOE has tentatively found that the standards would save a significant amount of energy (see section III.C.2) and result in a cleaner environment. In the 30-year period after the new standards become effective, the Nation would tentatively save 0.098 quads (sum of 0.088 quads for Class A machines and 0.010 quads for Class B machines) of primary energy. These energy savings also would tentatively result in significantly reduced emissions of air pollutants and greenhouse gases associated with electricity production by avoiding the emission of 5.14 Mt of CO_2, up to 0.69 kt of NO_X, and up to 0.085 tons of Hg. In addition, DOE expects the standards to prevent the construction of 0.046 new 1,000 MW power plants by 2042. In total, DOE tentatively estimates the total net present value to the Nation of these standards to be $0.105 billion (sum of a positive net present value of $0.105 billion for Class A machines and zero [less than $0.5 million] for Class B machines) from 2012 to 2042 in 2008$.

Commercial customers would see benefits from the proposed standards. Although DOE expects the installed cost of the higher efficiency beverage vending machine to be approximately 4.8 percent higher than the average price of machines available today, when weighted by shipments across equipment classes, the energy efficiency gains would result in lower energy costs, saving customers about 19.8 percent per year on their energy bills. Based on DOE's LCC analysis for equipment with known shipments, DOE tentatively estimates that the mean payback period for higher efficiency beverage vending machines would be between 3.8 and 6.0 years depending on equipment class. In addition, when the net results of these equipment price increases and energy cost savings are summed over the lifetime of the higher efficiency equipment, customers could save approximately $49 to $316 (depending on equipment class) compared to their expenditures on today's baseline beverage vending machine.

B. Authority

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 amendments to EPCA contained in the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, include new or amended energy conservation standards and test procedures for some of these products, and direct DOE to undertake rulemakings to promulgate such requirements. In particular, section 135(c)(4) of EPACT 2005 amends EPCA to direct DOE to prescribe energy conservation standards for beverage vending machines. (42 U.S.C. 6295(v))

Because of its placement in Part A of Title III of EPCA, the rulemaking for beverage vending machine energy conservation standards is bound by the requirements of 42 U.S.C. 6295. However, since beverage vending machines are commercial equipment, DOE intends to place the new requirements for beverage vending machines in Title 10 of the Code of Federal Regulations (CFR), Part 431 (''Energy Efficiency Program for Certain Commercial and Industrial Equipment''), which is consistent with DOE's previous action to incorporate the EPACT 2005 requirements for commercial equipment. The location of the provisions within the CFR does not affect either their substance or applicable procedure, so DOE is placing them in the appropriate CFR part based on their nature or type and will refer to beverage vending machines as ''equipment'' throughout the notice.[4] The test procedures for beverage vending machines appear at Title 10 CFR 431.293 and 431.294.

EPCA provides criteria for prescribing new or amended standards for covered equipment. As indicated above, any new or amended standard for beverage vending machines 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) and (v)) But EPCA precludes DOE from adopting any standard that would not result in significant conservation of energy. (42 U.S.C. 6295(o)(3) and (v)) Moreover, DOE may not prescribe a standard for certain equipment if no test procedure has been established for that equipment. (42 U.S.C. 6295(o)(3) and (v)) EPCA also provides that, in deciding whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens after receiving comments on the proposed standard. (42 U.S.C. 6295(o)(2)(B)(i) and (v)) To the greatest extent practicable, DOE must consider the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, or in the initial charges for, or maintenance expenses of, the equipment 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 covered equipment likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary considers relevant.

Id.

Further, the Secretary may not prescribe an amended or new standard if interested parties have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and

[4] Because of their placement into 10 CFR 431, beverage vending machines will be referred to as ''equipment'' throughout this notice.

(v)) 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. See section III.D.2.

C. Background

1. History of Standards Rulemaking for Beverage Vending Machines

On August 8, 2005, section 135(c)(4) of EPACT 2005 amended section 325 of EPCA, in part, to direct DOE to issue energy conservation standards for the equipment covered by this rulemaking, which would apply to equipment manufactured 3 years after publication of the final rule establishing the energy conservation standards. (42 U.S.C. 6295(v)(1), (2) and (3) [5]) The energy use of this equipment has never been regulated at the Federal level.

Section 135(a)(3) of EPACT 2005 also amended section 321 of EPCA, in part, by adding definitions for terms relevant to this equipment. (42 U.S.C. 6291(40)) EPCA defines ''refrigerated bottled or canned beverage vending machine'' as ''a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.'' (42 U.S.C. 6291(40)) Section 136(a)(3) of EPACT 2005 amended section 340 of EPCA in part by adding a definition for ''commercial refrigerator, freezer, and refrigerator-freezer.'' [6]

During the course of this rulemaking, Congress passed the Energy Independence Security Act of 2007 (EISA 2007), which the President signed on December 19, 2007 (Pub. L. 110–140). Section 310(3) of EISA 2007 amended section 325 of EPCA in part by adding subsection 325(gg) (42 U.S.C. 6295(gg)). This subsection requires any new or amended energy conservation standards adopted after July 1, 2010, to incorporate ''standby mode and off mode energy use.'' (42 U.S.C. 6295(gg)(3)(A)) Because any standards associated with this rulemaking are required by August 2009, the energy use calculations will not include ''standby mode and off mode energy use.'' To include standby mode and off mode energy use requirements for this rulemaking would take considerable analytical effort and would likely require changes to the test procedure. Given the statutory deadline, DOE has decided to address this requirement when the energy conservation standards for beverage vending machines are reviewed in August 2015. At that time, DOE will consider the need for possible amendment in accordance with 42 U.S.C. 6295(m).

As an initial step to comply with EPCA's mandate to issue standards for beverage vending machines and to commence this rulemaking, on June 28, 2006, DOE published a notice of a public meeting and of the availability of its framework document for this rulemaking. 71 FR 36715. The framework document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for beverage vending machines and identified various issues to be resolved in conducting the rulemaking. DOE held a public meeting on July 11, 2006, to present the contents of the framework document, describe the analyses it planned to conduct during the rulemaking, obtain public comment on these subjects, and inform and facilitate interested parties' involvement in the rulemaking. DOE also gave interested parties an opportunity after the public meeting to submit written statements in response to the framework document.

On June 16, 2008, DOE published an advance notice of proposed rulemaking (ANOPR) concerning energy conservation standards for beverage vending machines. 72 FR 34094. In the ANOPR, DOE described and sought comment on its proposed equipment classes for this rulemaking and on the analytical framework, models, and tools (*e.g.,* LCC and national energy savings (NES) spreadsheets) that DOE used to analyze the impacts of energy conservation standards for beverage vending machines. In conjunction with the ANOPR, DOE also published on its Web site the complete ANOPR technical support document (TSD),[7] which included the results of DOE's preliminary (1) Engineering analysis, (2) markups analysis to determine equipment price, (3) energy use characterization, (4) LCC and payback period (PBP) analyses, (5) NES and national impact analyses (NIA), and (6) manufacturer impact analysis (MIA). In the ANOPR, DOE requested comment on these results and on a range of other issues including equipment classes, operating hours of compressors and lighting, refurbishment cycles, LCC baseline levels, base and standards case forecasts, differential impacts of new standards on future shipments by equipment class, selection of candidate standard levels, and the approach to characterizing energy conservation standards for beverage vending machines.

DOE held a public meeting in Washington, DC, on June 26, 2008, to present the methodology and results of the ANOPR analyses and solicit oral and written comments. Public comments focused on DOE's assumptions and approach and are addressed in detail in this NOPR.

2. Miscellaneous Rulemaking Issues

a. Consensus Agreement

After the ANOPR, Dixie-Narco stated that it would like the National Automatic Merchandising Association (NAMA) to facilitate and submit a consensus recommendation on behalf of the industry no later than December 15, 2008. Dixie-Narco stated that it would also like the new standards to take effect no later than January 1, 2010. (Dixie-Narco, No. 36 at p. 3) [8]

DOE supports efforts by interested parties to work together to develop and present to DOE recommendations on equipment categories and standard levels. Such recommendations are welcome throughout the standards rulemaking process. However, DOE did

[5] The relevant statutory provisions were renumbered pursuant to section 316 of the Energy Independence and Security Act of 2007, Public Law 110–140.

[6] This definition reads as follows:

''(9)(A) The term 'commercial refrigerator, freezer, and refrigerator-freezer' means refrigeration equipment that—

(i) Is not a consumer product (as defined in section 321 [of EPCA; 42 U.S.C. 6291(1)]);

(ii) Is not designed and marketed exclusively for medical, scientific, or research purposes;

(iii) Operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(iv) Displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;

(v) Has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(vi) Is designed for pull-down temperature applications or holding temperature applications; and

(vii) Is connected to a self-contained condensing unit or to a remote condensing unit.''
(42 U.S.C. 6311(9)(A))

[7] See *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines_tsd.html.*

[8] A notation in the form ''Dixie-Narco, No. 36 at p. 3'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to (1) A comment submitted by Dixie-Narco, (2) in document number 36 in the docket of this rulemaking, and (3) appearing on page 3 of document number 36.

not receive any consensus recommendations before publication of this NOPR. While DOE still encourages a consensus recommendation and will attempt to incorporate it into this rulemaking, any recommendation submitted to DOE during the NOPR comment period will be considered as a public comment.

b. Design Requirements

At the ANOPR public meeting, the Northwest Power and Conservation Council (NPCC) stated that under EISA, the Federal Government can regulate more than one characteristic of equipment, perhaps as a performance standard as well as a prescriptive standard. (NPCC, Public Meeting Transcript, No. 29 at p. 83) [9]

EPCA provides that an ''energy conservation standard'' must be either (A) ''a * * * level of energy efficiency'' or ''a * * * maximum quantity of energy use,'' or (B) for certain specified equipment, ''a design requirement.'' (42 U.S.C. 6291(6)) Thus, an ''energy conservation standard'' cannot consist of both a design requirement and a level of efficiency or energy use. Id.[10] Moreover, item (A) above indicates that a single energy conservation standard cannot have measures of both energy efficiency and energy use. Furthermore, EPCA specifically requires DOE to base its test procedure for this equipment on American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 32.1–2004, ''Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.'' (42 U.S.C. 6293(b)(15)) The test methods in ANSI/ASHRAE Standard 32.1–2004 consist of means to measure energy consumption, not energy efficiency.

For the reasons stated above, DOE does not intend to develop efficiency standards or design requirements for this equipment. Instead, DOE intends to develop standards for maximum levels of energy use for beverage vending machines, and manufacturers could meet these standards with their own design methods.

c. Combination Vending Machines

Combination vending machines have a refrigerated volume for the purpose of cooling and vending ''beverages in a sealed container,'' and are therefore covered by this rule. However, beverage vending is not their sole function. Combination machines also have non-refrigerated volumes for the purpose of vending other, non-''sealed beverage'' merchandise. In the ANOPR, DOE addressed several comments from interested parties regarding combination vending machines. Specifically, these parties were concerned that regulating vending machines that contain both refrigerated and non-refrigerated products could result in confusion about what this rulemaking covers, or could result in manufacturers taking advantage of loopholes to produce equipment that does not meet the standards. In response, DOE stated that that the language used in EPCA to define beverage vending machines is broad enough to include any vending machine, including a combination machine, as long as some portion of that machine cools bottled or canned beverages and dispenses them upon payment. (42 U.S.C. 6291(40)) DOE interprets this language to cover any vending machine that can dispense at least one type of refrigerated bottled or canned beverage, regardless of the other types of vended products (some of which may not be refrigerated). 73 FR 34105–06.

III. General Discussion

A. Test Procedures

On December 8, 2006, DOE published a final rule in the **Federal Register** that incorporated by reference ANSI/ASHRAE Standard 32.1–2004, with two modifications, as the DOE test procedure for this equipment. (71 FR 71340, 71375; 10 CFR 431.294) The first modification specified that in section 6.2, Voltage and Frequency, equipment with dual nameplate voltages must be tested at the lower of the two voltages only. 71 FR 71340, 71355 The second modification specified that (1) any measurement of ''vendible capacity'' of refrigerated bottled or canned beverage vending machines must be in accordance with the second paragraph of section 5 of ANSI/ASHRAE Standard 32.1–2004, Vending Machine Capacity; and (2) any measurement of ''refrigerated volume'' of refrigerated bottled or canned beverage vending machines must be in accordance with the methodology specified in section 5.2, Total Refrigerated Volume (excluding subsections 5.2.2.2 through 5.2.2.4) of ANSI/Association of Home Appliance Manufacturers (AHAM) HRF–1–2004, ''Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.'' *Id.*

B. Technological Feasibility

1. General

DOE considers design options technologically feasible if they exist in the marketplace or if research has progressed to the development of a working prototype. ''Technologies incorporated in commercially available equipment or in working prototypes will be considered technologically feasible.'' 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i)

In each standards rulemaking, DOE conducts a screening analysis based on information it has gathered regarding all current technology options and prototype designs. In consultation with interested parties, DOE develops a list of design options for consideration in the rulemaking. All technologically feasible design options are candidates in this initial assessment. Early in the process, DOE eliminates from consideration any design option (a) that is not technologically feasible; (b) that is not practicable to manufacture, install, or service; (c) that will have adverse impacts on equipment utility or availability; or (d) for which there are health or safety concerns that cannot be resolved. Chapter 4 of the TSD accompanying this notice contains a description of the screening analysis for this rulemaking.

In the ANOPR, DOE eliminated seven of the technologies considered in the market and technology assessment. Higher efficiency evaporator and condenser fan blades, low-pressure differential evaporators, and defrost mechanisms were eliminated because they are not expected to improve energy efficiency. (73 FR 34108–09) Thermoacoustic refrigeration, magnetic refrigeration, electro-hydrodynamic heat exchangers, and copper rotor motors were eliminated because they are in the research stage. Therefore, they would not be practicable to manufacture, install, or service on the scale necessary to serve the relevant market at the time of the effective date of the standard. Because these technologies are in the research stage, there are also no working prototypes that allow DOE to assess whether they would have any adverse impacts on utility to significant subgroups of customers, result in the unavailability of any types of equipment, or present any significant

[9] A notation in the form ''NPCC, Public Meeting Transcript, No. 29 at p. 83'' identifies an oral comment that DOE received during the June 26, 2008, ANOPR Public Meeting. This comment was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EERE–2006–STD–0125). This particular notation refers to a comment (1) Made during the public meeting by NPCC; (2) recorded in document number 29, which is the public meeting transcript filed in the docket of this rulemaking; and (3) appearing on page 83 of document number 29.

[10] Beverage vending machines are not one of the specified equipment for which EPCA allows a standard to consist of a design requirement. (42 U.S.C. 6291(6)(B), 6292(a))

adverse impacts on health or safety. (73 FR 34109) DOE believes that all the efficiency levels discussed in today's notice are technologically feasible because there is equipment on the market or there are working prototypes at all of the efficiency levels analyzed. Chapter 4 of the TSD includes a discussion of the technological feasibility of the design options considered in the screening analysis.

2. Maximum Technologically Feasible Levels

In considering whether to adopt new standards for a type or class of beverage vending machines, DOE must ''determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible'' for such equipment. (42 U.S.C. 6295(p)(1) and (v)) If the standards are not designed to achieve such efficiency or use, the Secretary shall state the reasons for this in the proposed rule. *Id.* The values in Table III–1 represent the energy use levels that would achieve the maximum reductions in energy use that are technologically feasible at this time for beverage vending machines. DOE identified these maximum technologically feasible (''max-tech'') levels for the equipment classes analyzed as part of the engineering analysis (chapter 5 of the TSD). For both equipment classes, DOE applied the most efficient design options available for energy-consuming components.

TABLE III–1—MAX-TECH ENERGY USE LEVELS

Equipment class	Max-tech level *kWh/day*
A	MDEC = 0.045 × V + 2.42
B	MDEC = 0.068 × V + 2.63

''V'' is the refrigerated volume of the refrigerated bottled or canned beverage vending machine, as measured by ANSI/AHAM HRF–1–2004, ''Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.''

C. Energy Savings

1. Determination of Savings

DOE used the NES spreadsheet to estimate energy savings. The spreadsheet forecasts energy savings over the period of analysis for TSLs relative to the base case. DOE quantified the energy savings attributable to an energy conservation standard as the difference in energy consumption between the trial standards case and the base case. The base case represents the forecast of energy consumption in the absence of new mandatory efficiency standards. The NES spreadsheet model is described in section IV.G of this notice and in chapter 11 of the TSD accompanying this notice.

The NES spreadsheet model calculates the energy savings in site energy or kilowatt hours (kWh). Site energy is the energy directly consumed at building sites by beverage vending machines. DOE expresses national energy savings in terms of the source energy savings, which are the energy savings used to generate and transmit the energy consumed at the site. Chapter 11 of the TSD contains a table of factors used to convert kWh to Btu. DOE derives these conversion factors, which change with time, from EIA's *AEO2009.*

2. Significance of Savings

EPCA prohibits DOE from adopting a standard that would not result in significant additional energy savings. (42 U.S.C. 6295(o)(3)(B) and (v)) While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended significant energy savings to be savings that were not ''genuinely trivial.'' The estimated energy savings for the trial standard levels considered in this rulemaking range from 0.001 to 0.107 quadrillion Btu (quads); therefore, DOE considers them significant within the meaning of section 325 of the Act.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to be evaluated in determining whether an energy conservation standard is economically justified. The following sections discuss how DOE has addressed each factor thus far in this rulemaking. (42 U.S.C. 6295(o)(2)(B)(i) and (v))

a. Economic Impact on Manufacturers and Commercial Customers

DOE uses an annual cash-flow approach in determining the quantitative impacts of a new or amended standard on manufacturers. This includes both a short-term assessment based on the cost and capital requirements between the announcement of a regulation and when the regulation comes into effect, and a long-term assessment. Impacts analyzed include INPV, cash flows by year, and changes in revenue and income. Next, DOE analyzes and reports the impacts on different types of manufacturers, paying particular attention to impacts on small manufacturers. DOE then considers the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures, and loss of capital investment. Finally, DOE takes into account the cumulative impact of regulations on manufacturers. For a more detailed discussion of the MIA, see chapter 13 of the TSD.

For customers, measures of economic impact are generally the changes in installed price and annual operating costs (*i.e.,* the LCC). Chapter 8 of the TSD presents the LCC of the equipment at each TSL. The LCC is one of the seven factors to be considered in determining the economic justification for a new or amended standard. (42 U.S.C. 6295(o)(2)(B)(i)(II) and (v))

b. Life-Cycle Costs

The LCC is the total customer expense for a piece of equipment over the life of the equipment *(i.e.,* purchase price plus maintenance and operating costs). The LCC analysis compares the life-cycle costs of equipment designed to meet new or amended energy conservation standards with the life-cycle cost of the equipment likely to be installed in the absence of such standards. DOE determines these costs by considering (1) total installed price to the purchaser (including manufacturer selling price (MSP), sales taxes, distribution channel markups as shown in Table IV–3, and installation cost), (2) the operating expenses of the equipment (energy cost and maintenance and repair cost), (3) equipment lifetime, and (4) a discount rate that reflects the real cost of capital and puts the LCC in present value terms.

Recognizing that each type of commercial customer who uses a beverage vending machine is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations for seven types of businesses. Six of these typically purchase and install beverage vending machines in their buildings: office/healthcare (including a large number of firms engaged in financial and other services, medical and dental offices, and nursing homes); retail (including all types of retail stores and food and beverage service facilities); schools (including colleges, universities and large groups of housing facilities owned by State governments, such as prisons); manufacturing facilities and military bases (typically large utility customers that pay industrial rates for their electricity consumption); and ''other'' (including warehouses, hotels/motels, and assembly buildings). The seventh business type, which is the most common purchaser of the equipment, is a local bottler or vending machine operator that typically has the machine

installed in one of the other six business types, provides vending services, and splits the coin box receipts through a contractual arrangement with the site owner. For a more detailed discussion of the LCC analysis, see chapter 8 of the TSD.

c. Energy Savings

While significant energy conservation is a separate statutory requirement for imposing an energy conservation standard, EPCA requires DOE to consider the total projected energy savings that are expected to result directly from the standard in determining the economic justification of such a standard. (42 U.S.C. 6295(o)(2)(B)(i)(III), and (3), and (v)) DOE used the NES spreadsheet results in its consideration of total projected savings. Section IV.G.1 of this notice discusses the savings figures.

d. Lessening of Utility or Performance of Equipment

In establishing equipment classes, evaluating design options, and assessing the impact of potential standard levels, DOE tried to avoid having new standards for beverage vending machines lessen the utility or performance of the equipment under consideration in this rulemaking. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and (v)) None of the proposed trial standard levels considered in this rulemaking involves changes in equipment design or unusual installation requirements that would reduce the utility or performance of the equipment. See chapter 4 and chapter 16 of the TSD for more detail.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition likely to result from standards. It directs the Attorney General to determine in writing the impact, if any, of any lessening of competition likely to result from imposition of a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (ii), and (v)) DOE has transmitted a written request to the Attorney General soliciting a written determination on this issue.

f. Need of the Nation To Conserve Energy

The non-monetary benefits of the proposed standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system, and in reduced reliance on foreign sources of energy. Reductions in the overall demand for energy will reduce the Nation's reliance on foreign sources of energy and increase reliability of the Nation's electricity system. DOE conducted a utility impact analysis to show the reduction in installed generation capacity. Reduced power demand (including peak power demand) generally improves the security and reliability of the energy system.

The proposed standards are likely to result in improvements to the environment. In quantifying these improvements, DOE has defined a range of primary energy conversion factors and associated emission reductions based on the generation that energy conservation standards displaced. DOE reports the environmental effects from each trial standard level for this equipment in the draft environmental assessment in chapter 16 of the TSD. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and (v))

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and (v)) Under this provision, DOE considered LCC impacts on identifiable groups of customers, such as customers of different business types who may be disproportionately affected by any national energy conservation standard. In particular, DOE examined the LCC impact on small businesses (*i.e.,* those with low annual income) that may not be able to afford a significant increase in the purchase price (''first cost'') of beverage vending machines. Some of these customers may retain equipment past its useful life. Large increases in first cost also could preclude the purchase and use of equipment altogether.

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 indicate the cost-effectiveness of products meeting potential energy conservation standards. These values include, but are 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 full analysis serve as the basis for DOE to definitively determine 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

DOE used two spreadsheet tools to determine the impact of energy conservation standards on the Nation. The first spreadsheet calculates LCCs and PBPs of potential new energy conservation standards. The second spreadsheet provides shipments forecasts and then calculates NES and NPV impacts of potential new energy conservation standards. DOE also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts that energy conservation standards for beverage vending machines have on utilities and the environment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy economy of the United States and has been developed over several years by EIA primarily to prepare the *Annual Energy Outlook* (*AEO*). NEMS produces a widely known baseline forecast for the Nation through 2025 and is available on the DOE Web site.[11] The version of NEMS used for efficiency standards analysis is called NEMS–BT [12] and is based on the *AEO2008* version with minor modifications. NEMS offers a sophisticated picture of the effect of standards, since it measures the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking,

[11] *http://www.eia.doe.gov/oiaf/aeo/overview.*

[12] EIA approves use of the name NEMS to describe only an 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 used here. For more information on NEMS, refer to *The National Energy Modeling System: An Overview 1998.* DOE/EIA–0581 (98), February 1998. BT is DOE's Building Technologies Program. NEMS–BT was formerly called NEMS–BRS.

DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include equipment classes, manufacturers, quantities, and types of equipment sold and offered for sale; retail market trends; and regulatory and non-regulatory programs. See chapter 3 of the TSD for further discussion of the market and technology assessment.

1. Definition of Beverage Vending Machine

EPCA defines the term ''refrigerated bottled or canned beverage vending machine'' as ''a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.'' (42 U.S.C. 6291(40)) Thus, coverage of equipment under EPCA as a beverage vending machine in part depends on whether it cools and dispenses ''bottled beverages'' and/or ''canned beverages.'' Based on comments on the framework document, DOE tentatively decided to consider a broader definition for the terms ''bottled'' and ''canned'' as they apply to beverage vending machines. Such a definition would avoid unnecessary complications regarding the material composition of the container and eliminate the need to determine whether a particular container is a bottle or a can. A bottle or can in this context refers to ''a sealed container for beverages,'' so a bottled or canned beverage is ''a beverage in a sealed container.'' In the ANOPR, DOE sought comment on this broader definition and on whether it is consistent with the intent of EPCA. DOE did not receive any comments on this definition. Therefore, DOE is proposing to define a bottled or canned beverage as ''a beverage in a sealed container.''

2. Equipment Classes

When evaluating and establishing energy conservation standards, DOE generally divides covered equipment into equipment classes by the type of energy used, capacity, or other performance-related features that affect efficiency and factors such as the utility of such feature(s). (42 U.S.C. 6295(q)) DOE routinely establishes different energy conservation standards for different equipment classes based on these criteria.

Certain characteristics of beverage vending machines have the potential to affect their energy use and efficiency. Accordingly, these characteristics could be the basis for separate equipment classes for these machines. DOE determined that the most significant criterion affecting beverage vending machine energy use is the method used to cool beverages. DOE divided covered equipment into two equipment classes, Class A and Class B. DOE defines these terms as follows:

- Class A means a refrigerated bottled or canned beverage vending machine that is fully cooled.
- Class B means any refrigerated bottled or canned beverage vending machine not considered to be Class A.

The Class A beverage vending machine equipment class comprises machines that cool product throughout the entire refrigerated volume. Class A machines generally use ''shelf-style'' vending mechanisms and a transparent (glass or polymer) front. Because the next-to-be-vended product is visible to the customer and any product can be selected by the customer off the shelf, all bottled or canned beverage containers are necessarily enclosed within the refrigerated volume.

In Class B beverage vending machines, cold, refrigerated air is directed at a fraction (or zone) of the refrigerated volume. This cooling method is used to assure that the next-to-be-vended product will be the coolest product in the machine. These machines typically have an opaque front and use a ''stack-style'' vending mechanism.

B. Engineering Analysis

The engineering analysis develops cost-efficiency relationships to show the manufacturing costs of achieving increased efficiency. DOE has identified the following three methodologies to generate the manufacturing costs needed for the engineering analysis: (1) The design-option approach, which calculates the incremental costs of adding design options to a baseline model that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency based on detailed cost data for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Approach

In this rulemaking, DOE is adopting a design-option approach, which calculates the incremental costs of adding specific design options to a baseline model. DOE decided on this approach after receiving no response to its ANOPR request for the manufacturer data needed to execute an efficiency-level, approach-based analysis. The design-option approach allows DOE to make its engineering analysis methodologies, assumptions, and results publicly available, allowing advocates, manufacturers, and other interested parties the opportunity to review and comment on this information. Using the design-option approach, cost-efficiency relationship estimates are based on manufacturer or component supplier data or derived from engineering computer simulation models. Chapter 5 of the TSD contains a detailed description of the equipment classes analyzed and analytical models used to conduct the beverage vending machine engineering analysis based on the design-option approach.

2. Equipment Analyzed in the Engineering Analysis

DOE analyzed three beverage vending machines of different sizes for both equipment classes to assess how energy use varies with size. DOE chose a small, medium, and large machine for Class A and Class B beverage vending machines, based on current market offerings. See chapter 3 of the TSD for a detailed description of the Class A and Class B equipment classes.

In the ANOPR, DOE responded to several comments and presented a detailed discussion of its equipment class selection methodology. 73 FR 34103. For the NOPR, DOE increased the physical case dimensions based on a reevaluation of equipment currently on the market, even though the equipment classification methodology has not changed since the ANOPR. The case dimension increases affected the engineering parameters that are a function of case dimension, including wall area, vendible capacity, and refrigerated volume. The changes to refrigerated volume and assumed vendible capacity are summarized in Table IV–1. All changes are described in detail in chapter 5 of the TSD.

TABLE IV–1—CONFIGURATIONS OF THE BEVERAGE VENDING MACHINES ANALYZED

	Class A			Class B		
	Small	Medium	Large	Small	Medium	Large
Vendible Capacity *number of cans*	300	400	500	450	650	800
Refrigerated Volume *ft*^{3}	17	22	34	17	22	26

3. Analytical Models

DOE's design-option-based engineering analysis relies on four analytical models to develop the relationship between cost and increased efficiency: the cost model, baseline model, design-options analysis, and energy consumption model. The cost model estimates the core case cost of a beverage vending machine for each equipment class. The core case cost is the fully absorbed production cost of components that do not consume energy. The baseline model, which defines baseline specifications and incorporates energy consuming components for each equipment class, estimates the energy-consumption and cost of the typical equipment (*i.e.,* units of typical efficiency) on the market today. The design-options analysis develops cost-efficiency input data for a list of potential energy-saving technologies that can be integrated into the baseline model to increase efficiency. The energy consumption model calculates the daily energy consumption (DEC) of beverage vending machines at the various performance levels achieved by implementing these design options. Chapter 5 of the TSD includes a detailed description of each analytical model and its role in calculating the cost-efficiency data results of the engineering analysis.

a. Cost Model

DOE used a cost model to estimate the core case cost (*i.e.,* the fully absorbed production cost of the structure, walls, doors, shelving and fascia of the case, but not the cost of any energy-using components) of beverage vending machines. This model was adapted from a cost model developed for DOE's rulemaking on commercial refrigeration equipment.[13] The approach for commercial refrigeration equipment involved disassembling a self-contained refrigerator, analyzing the materials and manufacturing processes for each component, and developing a parametric spreadsheet to model the cost to fabricate (or purchase) each component and the cost of assembly. Because of the similarities in manufacturing processes between self-contained commercial refrigeration equipment and beverage vending machines, DOE was able to adapt the commercial refrigeration equipment cost model for beverage vending machines by maintaining many of the assumptions about materials and manufacturing processes but modifying the dimensions and types of components specific to beverage vending machines. To confirm the accuracy of the cost model, DOE obtained input from interested parties on beverage vending machine production cost estimates and on other assumptions DOE used in the model. Chapter 5 of the TSD provides details of the cost model.

Following the ANOPR, DOE received no comments regarding its cost model; therefore, no significant changes were made to the methodology used in the NOPR analysis. Since the ANOPR, all dollar amounts have been updated to 2008$ using the producer price index.

b. Baseline Models

As mentioned above, the engineering analysis calculates the incremental costs for equipment with efficiency levels above a baseline model in each equipment class. DOE defined baseline specifications for each equipment class, including dimensions, numbers of components, operating temperatures, nominal power ratings, and other features needed to calculate energy consumption. The baseline specifications define the energy consumption and cost of the typical equipment (*i.e.,* units of typical efficiency) on the market today, namely beverage vending machines meeting the ENERGY STAR Tier 1 efficiency level. (See chapter 3 of the TSD for further details on the ENERGY STAR criteria.)

DOE established baseline specifications for each equipment class modeled in the engineering analysis by reviewing available manufacturer data, selecting several representative units based on that data, and then aggregating the physical characteristics of the selected units. This process created a representative unit for each equipment class with average characteristics for physical parameters (*e.g.,* volume, wall area), and typical performance for energy-consuming components (*e.g.,* fans, lighting). See chapter 5 of the TSD for these specifications.

DOE received one comment regarding the baseline refrigerant. In the ANOPR, DOE stated that hydrofluorocarbon (HFC) refrigerants would be the basis of its analyses because of the phaseout of hydrochlorofluorocarbons (HCFCs) in 2010,[14] and the volatility and availability issues associated with hydrocarbon (HC) refrigerants and CO_2. Coca-Cola commented that it is phasing out HFCs and that it should not have any refrigeration equipment with HFC refrigerants by 2012. (Coca-Cola, Public Meeting Transcript, No. 29 at pp. 179–180) The Joint Comment stated that while manufacturers and customers are interested in alternatives to HFC refrigerants, it considers the use of HFC refrigerants a good default assumption with respect to costs and performance. (Joint Comment, No. 34 at p. 2)

While DOE acknowledges the use of some alternative refrigerants (*i.e.,* HCs and CO_2) elsewhere in the world, the majority of the U.S. beverage vending machine industry uses HFC refrigerants. Since the analysis should be based on the refrigerant most widely used in beverage vending machines, DOE will continue to use HFC refrigerants as the basis for its technical analysis in this rulemaking.

c. Design Options

In the market and technology assessment for the ANOPR, DOE defined an initial list of technologies that could reduce the energy consumption of beverage vending machines. In the screening analysis for the ANOPR, DOE screened out four of these technologies based on four screening criteria: technological feasibility; practicability to manufacture, install and service; impacts on equipment utility or availability; and impacts on health or

[13] See *http://www.eere.energy.gov/buildings/appliance_standards/commercial/refrigeration_equipment.html* for further detail on and validation of the commercial refrigeration equipment cost model.

[14] EPA is phasing out the production and importation of certain HCFC refrigerants (*i.e.,* HCFC–142b and HCFC–22) in new equipment in the United States by January 1, 2010. EPA is phasing out the production and importation of all HCFC refrigerants in new equipment in the United States by January 1, 2015. (42 U.S.C. 7671(d))

safety. 73 FR 34108–09. The remaining technologies became inputs to the ANOPR engineering analysis as design options.

For the NOPR, DOE did not receive any comments suggesting revisions to the list of ANOPR design options. Therefore, the design option inputs remain the same for the NOPR engineering analysis. However, the Joint Comment stated that DOE must document that the energy savings potential of light-emitting diode (LED) lighting has received adequate consideration (Joint Comment, No. 34 at p. 2).

DOE's consideration of LED lighting technology is documented in the Engineering Analysis Spreadsheet and chapter 5 of the TSD. Since the issuance of the ANOPR, DOE has carefully reviewed the LED technology design option and revised the cost and energy usage data for the NOPR. The LED price and energy use updates are adapted from the commercial refrigeration rulemaking.[15] These changes are based on conversations with LED manufacturers and information gathered on existing LED systems for beverage vending machines. As a result of these conversations, DOE better understands how LED lighting can be configured to replace fluorescent systems in order to save energy without sacrificing utility. In certain applications, the focused light from LED systems delivers the same amount of light to the space being illuminated as fluorescent systems and allows for a reduction in the wattage consumed. As a result, overall energy consumption for lighting decreases. Implemented across the installed base of beverage vending machines, LED systems could result in considerable energy savings. Estimates of these savings can be found in chapter 5 of the TSD.

d. Energy Consumption Model

The energy consumption model estimates the DEC of beverage vending machines at various performance levels using a design-option approach. The model is specific to the categories of equipment covered under this rulemaking, but is sufficiently generalized to model the energy consumption of both covered equipment classes. For a given equipment class, the model estimates the DEC for the baseline and the energy consumption of several levels of performance above the baseline. The model is used to calculate each performance level separately.

In developing the energy consumption model, DOE made certain assumptions, including general assumptions about the analytical methodology and specific assumptions regarding load components and design options. DOE based its energy consumption estimates on new equipment tested in a controlled-environment chamber under the procedures and conditions specified in ANSI/ASHRAE Standard 32.1–2004, ''Methods of Testing for Bottled, Canned, and Other Sealed Beverages.'' [16] Manufacturers of beverage vending machines must certify that their equipment complies with Federal standards using this test method, which specifies a certain ambient temperature, humidity, and other requirements. One relevant specification that is absent from ANSI/ASHRAE Standard 32.1–2004 is the operating hours of the display case lighting during a 24-hour period. DOE assumes the operating time to be 24 hours (*i.e.,* that display case lighting is on throughout the 24-hour period) when conducting the analyses for this rulemaking. Chapter 5 of the TSD details these and other beverage vending machine considerations.

The energy consumption model calculates DEC from two major components: (1) Component energy consumption, and (2) compressor energy consumption (expressed as kWh/day). Component energy consumption is a sum of the direct electrical energy consumption of fan motors, lighting, vend mechanisms, control systems, and coin and bill validators. Compressor energy consumption is calculated from the total refrigeration load, expressed as Btu/h, and a compressor model based on the 10-coefficient compressor model in American Refrigeration Institute (ARI) Standard 540–2004, ''Performance Rating of Positive Displacement Refrigerant Compressors and Compressor Units.'' The total refrigeration load is a sum of the component heat load and non-electric load. The component heat load is a sum of the heat emitted by evaporator fan motors and lighting affecting refrigerated space. (Condenser fan motors are outside the refrigerated space of a beverage vending machine and do not contribute to the component heat load.) The non-electric load is the sum of: the heat contributed by radiation through glass doors in Class A machines; heat conducted through walls and doors; and sensible and latent loads from warm, moist air infiltration through vend doors and cracks. Chapter 5 of the TSD provides details on component energy consumption, compressor energy consumption, and heat load models.

During the framework public meeting, DOE asked for comments on which normalization metric, vendible capacity, or refrigerated volume would be most appropriate for setting standards for beverage vending machines. Based on public comments, DOE decided to use refrigerated volume in the ANOPR. 73 FR 34105. Following the ANOPR, a comment submitted by the American Council for an Energy-Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), and NPCC (hereafter ''Joint Comment'') stated that using internal refrigerated volume instead of a 12-ounce can count for rating beverage vending machines is appropriate. (Joint Comment, No. 34 at p. 3).

4. Engineering Analysis Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of DEC (in kWh) versus MSP (in dollars). DOE developed six curves representing the two equipment classes and three representative sizes analyzed in each equipment class. The methodology for developing the curves started with determining the energy consumption for baseline equipment and the full cost of production for this equipment. Above the baseline, DOE implemented design options using the ratio of cost to savings, and implemented only one design option at each engineering level analyzed. Design options were implemented until all available technologies were employed (*i.e.,* at a max-tech level). Table IV–2 shows the engineering analysis results. See TSD chapter 5 for additional detail on the engineering analysis and TSD appendix B for complete cost-efficiency results.

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[15] See *http://www.eere.energy.gov/buildings/appliance_standards/commercial/refrigeration_equipment.html* for further detail on and validation of the commercial refrigeration equipment LED price and usage data.

[16] These test procedures are incorporated by reference at 10 CFR 431.294.

Table IV-2 Engineering Analysis Cost-Efficiency Results

Equipment Class	Size Analyzed	Metric	Efficiency Level											
			Baseline	1	2	3	4	5	6	7	8	9	10	11
A	Small	MSP $/ft^3	$1,817.34	$1,856.20	$1,868.92	$1,876.79	$1,881.93	$1,893.33	$2,003.03	$2,027.85	$2,043.67	$2,055.07	$2,204.35	$2,971.76
		DEC kWh/day/ft^3	9.00	6.10	5.73	5.57	5.47	5.27	3.95	3.73	3.63	3.58	3.33	3.25
	Medium	MSP $/ft^3	$2,187.45	$2,222.07	$2,243.64	$2,251.52	$2,257.59	$2,268.99	$2,378.69	$2,408.68	$2,427.84	$2,439.23	$2,602.29	$3,456.21
		DEC kWh/day/ft^3	9.18	6.53	5.97	5.81	5.70	5.51	4.19	3.95	3.83	3.79	3.52	3.43
	Large	MSP $/ft^3	$2,368.67	$2,426.95	$2,433.02	$2,440.90	$2,453.62	$2,563.32	$2,593.31	$2,613.58	$2,624.98	$2,840.85	$3,846.11	n/a
		DEC kWh/day/ft^3	10.24	6.75	6.62	6.46	6.21	4.89	4.60	4.46	4.41	4.05	3.94	n/a
B	Small	MSP $/ft^3	$1,468.18	$1,521.33	$1,544.13	$1,557.72	$1,591.67	$1,603.07	$2,023.72	$2,909.47	n/a	n/a	n/a	n/a
		DEC kWh/day/ft^3	11.49	4.96	4.62	4.51	4.31	4.28	3.78	3.69	n/a	n/a	n/a	n/a
	Medium	MSP $/ft^3	$1,667.51	$1,716.84	$1,739.63	$1,744.77	$1,760.59	$1,796.01	$1,807.41	$2,228.06	$3,247.02	n/a	n/a	n/a
		DEC kWh/day/ft^3	12.31	5.56	5.20	5.12	4.99	4.76	4.72	4.22	4.12	n/a	n/a	n/a
	Large	MSP $/ft^3	$1,725.34	$1,779.80	$1,802.60	$1,819.53	$1,854.95	$1,866.35	$2,287.00	$3,439.97	n/a	n/a	n/a	n/a
		DEC kWh/day/ft^3	12.76	5.85	5.48	5.33	5.07	5.03	4.52	4.41	n/a	n/a	n/a	n/a

In addition to the design-option efficiency levels above, DOE calculated intermediate efficiency levels to bridge large performance level gaps created by certain design options. For instance, in a representative, medium-sized Class A machine, the LED design option leads to a considerable decrease in energy consumption between efficiency levels 5 and 6. Intermediate efficiency levels are necessary to create an even distribution of performance levels that are achievable without using a specified combination of design options. Chapter 5 of the TSD discusses these intermediate efficiency levels and the methodology behind their selection in more detail.

C. Markups To Determine Equipment Price

This section explains how DOE developed the distribution channel (supply chain) markups to determine installed costs for beverage vending machines (chapter 6 of the TSD). DOE used the supply chain markups it developed (including sales taxes and installation costs), along with the MSPs developed from the engineering analysis, to arrive at the final installed equipment prices for baseline and higher-efficiency beverage vending machines. As explained in the ANOPR, 73 FR 34113, DOE defined three distribution channels for beverage vending machines to describe how the equipment passes from the manufacturer to the customer. For the ANOPR analysis, DOE estimated market shares of 68 percent, 27 percent, and 5 percent for the manufacturer/beverage bottler (distribution channel #1), manufacturer/wholesaler/operator (distribution channel #2), and manufacturer/wholesaler/site owner (distribution channel #3) channels, respectively, for all beverage vending machines, based on market estimates from consultants. That is, 68 percent of all sales were estimated to pass from the manufacturer directly to a bottler; 27 percent were estimated to pass from the manufacturer through a wholesaler to a beverage machine operator; and 5 percent were estimated to pass from the manufacturer through a wholesaler to the owner of the premises where the machine operated. In the latter case, the owner of the premises also owned the beverage vending machine. 73 FR 34113.

Regarding distribution channels for vending machines and the calculation of the overall cost markups, Royal Vendors commented that distribution channel #1 (direct sales to major bottlers) will be around 85 percent to 90 percent (Royal Vendors, No. 29 at p. 39). Dixie-Narco stated its sales percentages through the three distribution channels would be 85 percent, 12 percent and 3 percent, respectively. (Dixie-Narco, No. 29 at p. 40) Both comments gave increased importance to direct sales to major bottlers and deemphasized sales through wholesalers to vending operators and site owners. NPCC asked if the markups would be lower if DOE increased the market share of channel #1 from 68 percent to 80 or 85 percent. (NPCC, No. 29 at p. 52)

For the NOPR, DOE updated its assumptions regarding the percentage breakdown of market distribution through the different channels to determine customer markups for purchasing beverage vending machines. These updates were to increase the fraction of the market through distribution channel #1 to 85 percent and reduce the fraction of the market distribution through other channels in line with manufacturer comments. Table IV–3 provides the revised estimated distribution channel shares (in percentage of total sales) through each of the three distribution channels.

Table IV-3 Distribution Channel Market Shares for Beverage Vending Machines

Channel 1	Channel 2	Channel 3
Manufacturer ↓ Beverage Bottler/Distributor	Manufacturer ↓ Equipment Wholesaler/Distributor ↓ Vending Machine Operator	Manufacturer ↓ Equipment Wholesaler/Distributor ↓ Site Owner
85%	10%	5%

For each step in the distribution channels presented above, DOE estimated a baseline markup and an incremental markup, which are additional amounts added when equipment is sold and installed. A baseline markup is applied for the purchase of baseline equipment. An incremental markup is applied to the incremental increase in MSP for the purchase of higher efficiency equipment.

DOE developed markups for each step of a given distribution channel based on available financial data as described in the ANOPR analysis. 73 FR 34113–14. DOE continued to use the same sources of data for the NOPR analysis, but updated the input assumptions to the most recent data where possible.

Average overall markups in each distribution channel can be calculated using estimates of the shipments of beverage vending machines by distribution of State population. Since markups are not uniform among wholesalers, DOE used the Excel spreadsheet-based Crystal Ball program, which employs Monte Carlo analysis, to reflect this uncertainty in the LCC analysis. Table IV–4 and Table IV–5 show overall baseline and incremental markups for sales within each distribution channel. Chapter 6 of the TSD provides additional detail on markups.

TABLE IV–4—OVERALL AVERAGE BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX

	Manufacturer direct	Wholesaler/ Distributor	Overall weighted average
Markup	1.000	1.460	1.069
Sales Tax	1.070	1.070	1.070
Overall Markup	1.070	1.562	1.144

TABLE IV–5—OVERALL AVERAGE INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX

	Manufacturer direct	Wholesaler/ Distributor	Overall weighted average
Markup	1.000	1.200	1.030
Sales Tax	1.070	1.070	1.070
Overall Markup	1.070	1.284	1.102

D. Energy Use Characterization

The energy use characterization estimates the annual energy consumption of beverage vending machines. This estimate is used in the subsequent LCC and PBP analyses (chapter 8 of the TSD) and NIA (chapter 11 of the TSD). DOE estimated the energy use for machines in the two equipment classes analyzed [17] in the engineering analysis (chapter 5 of the TSD) based on the DOE test procedure.[18] DOE assumed all Class A machines to be installed indoors and subject to a constant air temperature of 75 °F and relative humidity of 45 percent, matching test conditions in the DOE test procedure. 73 FR 34114–15. Based on market data and discussions with several beverage vending machine distributors, DOE assumed that 25 percent of Class B machines are placed outdoors and the remaining 75 percent are installed indoors. DOE sought but did not receive comment on this distribution. Thus, DOE maintained the distribution for the NOPR analysis of Class B machines.

In response to the ANOPR, the Edison Electric Institute (EEI) commented that it would be helpful for interested parties if DOE would provide the annual energy usage of Class B machines located outdoors versus machines located indoors (EEI, No. 37 at p. 2). EEI also commented that it would be helpful if DOE collected data on peak kW demands for machines located both indoors and outdoors. Such data would help determine if the new energy conservation standards will have any impact on the peak kW demands based on DEC, especially for equipment located outdoors on hot summer days (EEI, No. 37 at p. 2). EEI further commented that DOE should calculate energy savings separately for indoor and outdoor machines based on actual estimated ambient conditions for the machines (test procedure for indoor machines, climate data for outdoor machines). Also, for outdoor machines, DOE should estimate a percentage of machines that will be affected by solar heat gain because of southern or western exposures (EEI, No. 37 at p. 4).

In response to the EEI request, DOE is including the annual energy usage of Class B machines located outdoors versus machines located indoors in the TSD of today's NOPR. However, DOE does not plan to obtain peak demand data for indoor and outdoor machines. During the ANOPR public meeting, DOE presented the statement that 100 percent of Class A machines were intended to be installed indoors and that, based on

[17] Class A and Class B vending machines are described in section II.A.2 of the ANOPR. 73 FR 34103–34104.

[18] DOE incorporated ANSI/ASHRAE Standard 32.1–2004 by reference, with two modifications, as the DOE test procedure for the beverage vending machines. 71 FR 71340, 71375 (Dec. 8, 2006); 10 CFR 431.294.

inquiries to distributors, 75 percent of Class B machines appeared to be installed indoors (DOE, No. 29 at pp. 53–54). Interested parties discussed the implications of that assumption, but made no challenge to the assumption itself. Therefore, the vast majority of all beverage vending machines appear to be in conditioned environments. As a result, DOE does not believe that outdoor beverage vending machines will have a significant impact on peak loads for utilities.

During the ANOPR public meeting, participants discussed the impact of refurbished machines, their energy use profile, and energy efficiency upgrades to existing machines based on accounting demands (Coca-Cola, No. 29 at pp. 88–89). Dixie-Narco commented that it has kits listed on the U.S. Environmental Protection Agency (EPA) Web site that upgrade existing machines to meet ENERGY STAR Tier 2 (Dixie-Narco, No. 29 at pp. 90–91).

DOE acknowledges this information, but it does not have the authority to regulate refurbished vending machines. DOE has carefully considered its authority to establish energy conservation standards for rebuilt and refurbished beverage vending machines in light of these comments, and has tentatively concluded that its authority does not extend to rebuilt and refurbished equipment.

Throughout the history of the energy conservation standards program, DOE has not regulated used consumer products or commercial equipment that has been refurbished, rebuilt, or undergone major repairs, since EPCA only covers new covered equipment distributed in commerce.[19] DOE concludes that rebuilt or refurbished beverage vending machines are not new covered equipment under EPCA and, therefore, are not subject to DOE's energy conservation standards or test procedures.

Regarding the energy consumption model, Coca-Cola commented that moisture removal could account for nearly 12 percent of vending machine energy consumption in a reload situation, which is an intermittent occurrence. (Coca-Cola, No. 29 at p. 32 and No. 29 at p. 65) DOE accounts for the effect of ambient humidity changes on the hourly energy consumption calculation through use of weather files. However, DOE has not modeled a product reload situation because it is an intermittent occurrence and DOE has no information about total reload times or schedules in actual use. A reload of product is not part of the daily energy consumption test required by ASHRAE Standard 32.1–2004, which DOE used as the basis for the energy consumption calculations.

Several commenters discussed the use of lighting controls and their impact on beverage vending machine energy use. Several manufacturers and other interested parties commented that having lighting and/or occupancy controls will help reduce energy consumption, especially when these machines go into ''sleep mode.'' (Coca-Cola, No. 29 at p. 78; Dixie-Narco, No. 29 at pp. 69–71; EEI, No. 37 at p. 3; Dixie-Narco, No. 36 at pp. 1, 2; PepsiCo, No. 29 at pp. 20–21; and Naval Facilities Engineering Service Center (NFESC), No. 41 at p. 1). PepsiCo stated that it is difficult to determine an average lighting operation time, but that turning the lights off should be encouraged. (PepsiCo, Public Meeting Transcript, No. 29 at p. 74) Coca-Cola stated that beverage vending machines may not incorporate lighting in the near future. (Coca-Cola, Public Meeting Transcript, No. 29 at p. 78) Royal Vendors stated that although automated refrigeration and lighting controls may become more popular, the current methodology is reasonable and consistent for the purposes of this analysis.

Having lighting controls and setting them properly at the factory does reduce beverage vending machine energy consumption when the machine goes into sleep mode. However, DOE does not have the authority to mandate lighting controls and/or occupancy sensors as a design requirement simultaneously with an energy conservation standard due to the definition of ''energy conservation standard'' in 42 U.S.C. 6291(6). See section II.C.2.c for further detail. Also, the current DOE test procedure does not provide a mechanism to account for the reduction in DEC resulting from lighting controls and/or occupancy sensors in the machines. However, EPCA as amended by EISA 2007 states that ''at least once every 7 years, the Secretary shall review test procedures for all covered products * * *.'' 42 U.S.C. 6293(b)(1)(A). DOE may consider incorporating a mechanism to account for the reduction in DEC resulting from lighting controls and/or occupancy sensors during its review of the test procedure for beverage vending machines. DOE has not included the impact of these lighting controls as part of the engineering or energy use characterization analyses for this rulemaking and is retaining the assumption of a 24-hour lighting operation period.

NFESC commented that the DOE analysis should not neglect the added electricity load on air-conditioned buildings. (NFESC, No. 41 at p. 3) Specifically, the comment stated that the appropriate question to ask is whether the added electricity required (as building cooling load) represents a significant percentage of the electricity required to operate the beverage vending machine. NEFSC calculations indicated that the added building cooling load electric demand represents an annual addition most probably on the order of 15% to the basic load imposed by operating the vending machine.

DOE acknowledges that it did not account for the additional cooling load imposed by the BVM on the whole building cooling load, and correspondingly, any space cooling energy benefits that come from the reduction of the BVM's electrical load. DOE accepts that such a cooling energy use reduction will likely occur. At the same time, any reduction in BVM energy use will also result in an increase in heating energy use within the buildings. This impact on building heating and cooling loads would only occur for those BVMs located indoors. The relative cooling-energy-use benefit to heating-energy-use penalty is a function of the climate location, building type and size, and the placement of the BVMs within the building. The BVM could be located in uncooled portions of an industrial building, in the entering vestibules in a grocery store or in a supermarket, or in the core of an office building. The relative monetary benefits are also a function of the relative heating and cooling fuel costs. The quantification of the relative benefits impact would have required an extensive whole-building heating and cooling energy use analysis. Such studies of the impacts coming from lighting energy use within buildings have been done in the past. However, lighting tends to have a load profile that correlates with the cooling energy use in buildings. This is less true for BVMs since they operate on a 24-hour basis. Considering both the cooling benefits and the heating penalties from reductions in BVM energy use, DOE believes, that the 15% figure suggested by the NFESC comment overstates the likely benefits. Therefore, DOE determined that an extensive whole-building analysis was not warranted.

As discussed in the engineering analysis above, DOE analyzed the three typical sizes (small, medium, and large vendible capacities), each with a

[19] As an example, this position was taken and discussed in the distribution transformers final rule, 72 FR 58203.

different refrigerated volume as measured by ANSI/AHAM HRF–1–2004 and shown in Table IV–1.

DOE used the same methodology to calculate the annual energy consumption for Class A and Class B vending machines as described in the ANOPR analysis. 73 FR 34115–16. For Class A vending machines, DOE calculated the annual energy consumption as the product of the average DEC (from the DOE test procedure indoor test condition of 75 °F, 45 percent relative humidity), times 365 days per year, which did not vary by State. For Class B vending machines, DOE used a weighted average between the annual average energy consumption for an outdoor machine and an indoor machine. To calculate a weighted energy use of all Class B machines, DOE added aggregated State-by-State results using data from each of the 237 Typical Meteorological Year 2 (TMY2) weather stations to the annual energy consumption of the remaining 75 percent of Class B machines located indoors.

DOE developed the annual energy consumption for each equipment class at each efficiency level for every State as inputs to the LCC and PBP analyses. Chapter 7 of the TSD shows the annual average energy consumption estimates by equipment class and efficiency level.

E. Life-Cycle Cost and Payback Period Analyses

In response to the requirements of section 325(o)(2)(B)(i) of EPCA (42 U.S.C. 6295(o)(2)(B)(i)), DOE conducted LCC and PBP analyses to evaluate the economic impacts of possible new beverage vending machine standards on individual customers. This section describes the analyses and the spreadsheet model DOE used. TSD chapter 8 provides details of the model and of all inputs to the LCC and PBP analyses.

The effects of standards on individual commercial customers include changes in operating expenses (usually lower) and total installed price (usually higher). The LCC is the total cost for a unit of beverage vending machines, over the life of the equipment, including purchase and installation expense and operating costs (energy expenditures and maintenance). To compute the LCC, DOE summed the installed cost of the equipment and its lifetime operating costs discounted to the time of purchase. The PBP is the change in purchase expense due to a given energy conservation standard divided by the change in first-year operating costs resulting from the standard. Otherwise stated, the PBP is the number of years it would take for the customer to recover the increased costs of a more efficient product through energy savings. DOE measures the changes in LCC and PBP associated with a given energy use standard level relative to a base case forecast of equipment energy use. The base case forecast reflects the market absent mandatory energy conservation standards. DOE believes LCC is a better indicator of economic impacts on consumers.

DOE also analyzed the effect of changes in operating expenses and installed price by calculating the PBP of potential standards relative to a base case. The PBP estimates the amount of time it would take the commercial customer to recover the anticipated, incrementally higher purchase expense of more energy efficient equipment through lower operating costs. The data inputs to the PBP calculation are the purchase expense (otherwise known as the total installed cost or first cost) and the annual operating costs for each selected design. The inputs to the equipment purchase expense were the equipment purchase price and installation price, with appropriate markups. The inputs to the operating costs were the annual energy consumption, electricity price, and repair and maintenance costs. The PBP calculation uses the same inputs as the LCC analysis but, since it is a simple payback, the operating cost is for the year the standards take effect, assumed to be 2012. For each efficiency level analyzed, the LCC analysis required input data for the total installed price of the equipment, operating cost, and discount rate.

DOE calculated the LCC for all customers as if each would purchase a new beverage vending machine in the year the standards take effect for newly manufactured equipment. Section 135(c)(4) of EPACT 2005 amended EPCA to add new subsections 325(v)(2), (3), and (4) (42 U.S.C. 6295(v)(1), (2), and (3)), which directs the Secretary to issue a final rule for refrigerated bottled or canned beverage vending machines no later than August 8, 2009. The energy conservation standard levels in the rule apply to all equipment manufactured 3 years after publication of the final rule. Consistent with EPCA, DOE used these dates in the NOPR analyses.

At the ANOPR public meeting, Dixie-Narco suggested that the industry has made great strides in partnership with the bottlers to reduce the energy consumption by over 50 percent in the last 5 years for both Class A and Class B beverage vending machines. Dixie-Narco stated that a vast majority of the machines will meet ENERGY STAR levels when the new DOE standards go into effect in 2012. (Dixie-Narco, No. 29 at pp. 17–19) The Joint Comment stated that provided DOE can confirm industry's assertion that the market has already shifted to ENERGY STAR Tier 2, DOE should take that level as the baseline rather than ENERGY STAR Tier 1. (Joint Comment, No. 34 at p. 3)

DOE does not agree that it should use ENERGY STAR Tier 2 as the baseline for the present analysis, because not all new products are expected to meet the Tier 2 level by 2012. (PepsiCo, No. 29 at p. 152), though most are expected to meet Tier 2 even without a minimum standard at Tier 2 (Dixie Narco, No. 29 at pp. 150–151; Coca-Cola, No. 29 at p. 149; PepsiCo, No. 29 at p. 149). In other rules, DOE has consistently based the baseline levels for the LCC analysis on products available in the marketplace. DOE used a distribution of efficiency levels based on its assessment of the future market for beverage vending machines when establishing the base case for the NIA. This distribution in the 2012 baseline market includes 10 percent of shipments at approximately the ENERGY STAR Tier 1 efficiency level and 90 percent of shipments at approximately the ENERGY STAR Tier 2 efficiency level. Thus, the baseline market includes efficiency levels at and above the LCC baseline efficiency, which is approximately ENERGY STAR Tier 1.

Regarding equipment lifetime, Dixie-Narco stated that it believes that the life expectancy of beverage vending machines will be 10 to 12 years by 2012. (Dixie-Narco, No. 29 at pp. 17–19) Coca-Cola commented that the lifetime has gone down from 13 years to about 10 years, and that the machine typically undergoes one refurbishment cycle during its life. Coca-Cola uses a financial model to replace or upgrade components or subsystems that need to be changed, which may or may not result in a change in energy profile. (Coca-Cola, No. 29 at pp. 86–87) Coca-Cola further commented that the lifetimes of legacy machines may be extended because of refurbishment and that it upgrades the energy efficiency of existing machines based on account needs and account demands. (Coca-Cola, No. 29 at pp. 88–89) Dixie-Narco stated that it currently has kits listed on the EPA Web site to upgrade existing machines to meet ENERGY STAR Tier 2 level. (Dixie-Narco, No. 29 at pp. 90–91)

Based on the information provided by the manufacturers in this discussion, DOE has changed the input assumptions for the life-cycle cost analysis and the shipment analysis model to reflect the

revised equipment life estimates to 10 years with one refurbishment cycle. The DOE analysis of proposed standard levels does not account for future, unknown energy impacts from refurbishments that may or may not occur during the 10-year equipment life or that provide energy benefits in conjunction with life extension. See chapter 8 of the TSD for further information.

Regarding the electricity prices and forecasts DOE used in the LCC analysis, EEI asked if DOE used Manufacturing Energy Consumption Survey (MECS) data for the beverage vending machines installed in the manufacturing sector. (EEI, No. 29 at p. 104) EEI recommended that DOE use EIA data for industrial electricity prices, as a large number of beverage vending machines are located in industrial facilities.

During the ANOPR public meeting, EEI asked if DOE considered separately the summer and winter energy usage of some of the outdoor machines, as summer use may be greater and at a higher commercial rate than winter use in certain climates. (EEI, No. 29 at p. 106) In its written comment, EEI recommended that DOE use seasonal rates and MECS data. (EEI, No. 37 at p. 3)

DOE used the EIA industrial electricity prices for averaging State-by-State electricity prices for the percentage of machines located in industrial, manufacturing, and government facilities for the ANOPR and NOPR analyses. DOE did not use seasonal variation in commercial electricity rates in its LCC analysis because seasonal variation in electricity rates differs throughout the country and even by utility, significantly complicating the analysis. The impact of higher energy consumption on the relatively small fraction of beverage vending machines located outdoors in the summer compared to winter was deemed to be of little impact on Class B equipment and of no impact on Class A equipment.

Regarding electricity price forecasts, the Joint Comment suggested that DOE use the most recent EIA *AEO* high price case for energy price forecasts [20] and include the cost and value of peak electricity demand in the analysis. (Joint Comment, No. 34 at p. 3) ACEEE asked DOE to review EIA *AEO* price applicability and offered to provide a list of alternative price forecasts. (ACEEE, No. 29 at pp. 107–108)

DOE updated its NOPR analysis to use the *AEO2009* reference case scenario for the base electricity price and electricity price forecasts into the future. The NOPR provides a sensitivity analysis based on the *AEO* high and low price scenarios. DOE continued to use the *AEO* forecasts, as it has done for other rules, and did not explore alternative electricity price forecasts. DOE believes that analyzing the results using the high-price and low-price scenarios provides sufficient insight into the likely range of electricity price impacts. DOE has no evidence that alternative scenarios are better predictors of future electricity costs.

Regarding future climate change legislation and its impact on the price of electricity, the Joint Comment suggested including the value of carbon emissions in the LCC and NPV analyses. (Joint Comment, No. 34 at p. 3)

The intent 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 Northeast Regional Greenhouse Gas Initiative (RGGI) in its *AEO2009* Early Release energy price forecasts. Western Climate Initiative (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. In addition, the Nation will benefit from reduction of carbon emissions as part of a national impact. Because of the range of possible values of emissions reductions, DOE shows them separately in order to take the impact into consideration. Putting the values into the overall NPV calculation will bury the effects. DOE believes it is important for the decision maker to be fully aware of the economic impacts of a proposed energy conservation standard. For these reasons, DOE will continue to report the results of the monetization of the value of carbon emissions in the Environmental Assessment (section V.B.6).

In the discussion of discount rates, Royal Vendors commented that Coca-Cola and PepsiCo purchase approximately 90 percent of all beverage vending machines. (Royal Vendors, No. 32 at p. 1) Royal Vendors and Dixie-Narco made similar remarks about the size of the market purchases by these two entities in a discussion of distribution channels. (Royal Vendors and Dixie-Narco, Public Meeting Transcript, No. 29 at pp. 39–40) In accordance with the comments regarding distribution channels, DOE modified the mix of commercial customers so that bottlers represent 85 percent of commercial customers. DOE also used the same 85 percent weight of bottlers to develop the discount rate distribution among beverage vending machine purchasers.

During the ANOPR public meeting, Coca-Cola commented that beverage vending machine maintenance costs are approximately $90 per year, energy upgrade costs vary based on the kit used, and a remanufacturing cycle costs around $500 to $600. (Coca-Cola, No. 29 at pp. 113–116) DOE received no other comments on this issue.

DOE has updated its maintenance cost assumptions to more closely reflect Coca-Cola's comments. This resulted in a minor decrease in assumed annual maintenance cost from $165 in the ANOPR analysis to $154 in the NOPR analysis.

Also during the ANOPR public meeting, participants discussed how the energy cost benefits should be reflected in the LCC analysis. Coca-Cola stated that energy subsidy contracts are pre-negotiated as part of the location contract based on considerations such as volume of throughput and length of the contract. (Coca-Cola, No. 29 at pp. 125–126) Any kind of energy subsidy machine owners pay to locate their machines on-site is pre-negotiated as part of the location contract. Also, energy cost reductions due to the use of higher efficiency equipment would be reflected in a reduced subsidy paid to the site. However, no market data have been provided to DOE that would allow computation of the actual allocation of energy cost benefits for the site owner and the vending machine owner. To account for such energy cost benefits for purposes of computing life cycle cost and payback period, DOE assumes that operating cost savings due to energy cost savings are transferred to the owner/operator of the beverage vending machine through the location contract. This is analytically equivalent to assuming that energy subsidies are reduced by the amount of the energy cost reductions.

Table IV–6 summarizes the inputs and key assumptions DOE used to calculate the economic impacts of

[20] EIA high and low price cases are based on EIA's assumed average world price for oil and the adjustments of the economy and the energy sector to that key assumption. In the high price case in *AEO2008,* the average electricity price in 2030 was about 2.2 percent higher than in the reference case. Since the supplemental tables for the AEO 2009 were not yet available, DOE used the ratio of high and low price cases from *AEO2008* to scale the *AEO2009* reference case. See chapter 8 of the TSD for additional information.

various energy consumption levels on customers. Equipment price (which includes Manufacturer's Selling Price, markups, and sales taxes), installation price, and baseline and higher efficiency all affect the installed cost of the equipment. Annual equipment energy consumption, electricity prices, electricity price trends, and repair and maintenance costs affect the operating cost. The effective date of the standard, discount rate, and lifetime of equipment all affect the calculation of the present value of annual operating cost savings from a proposed standard. Table IV–6 also shows how DOE modified these inputs and key assumptions for the NOPR analysis.

TABLE IV—6 SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Input	ANOPR description	Changes for NOPR
Baseline Efficiency Level	Energy savings (changes in equipment energy consumption) and energy cost savings are compared to a pre-selected baseline efficiency level (in this case Level 1). Baseline MSP and equipment energy consumption depend on the baseline efficiency level.	No changes.
Higher Efficiency Levels	A certain number of higher efficiency levels are pre-selected up to the max-tech level for LCC and PBP analyses. These higher efficiency levels affect MSP and equipment energy consumption.	No changes.
Baseline Manufacturer Selling Price	Price charged by manufacturer to either a wholesaler or large customer for baseline equipment.	No changes.
Standard-Level Manufacturer Selling Price Increases.	Incremental change in manufacturer selling price for equipment at each of the higher efficiency levels.	No changes.
Markups and Sales Tax	Associated with converting the manufacturer selling price to a customer price (chapter 6 of TSD).	Distribution of sales among market channels changed based on comments on the ANOPR. Sales tax rates updated to January 2009.
Installation Price	Cost to the customer of installing the equipment including labor, overhead, and any miscellaneous materials and parts. The total installed cost equals the customer equipment price plus the installation price.	Installation price updated to 2008$.
Equipment Energy Consumption	Site energy use associated with the use of beverage vending machines, which includes only the use of electricity by the equipment itself.	Updated to reflect results of the energy analysis.
Electricity Prices	Average commercial electricity price ($/kWh) in each State and for seven classes of commercial and industrial customers, as determined from EIA data for 2003 converted to 2007$.	Average commercial electricity price ($/kWh) in each State and for seven classes of commercial and industrial customers, as determined from EIA data for 2003, updated to 2008 prices.
Electricity Price Trends	Reflects the *AEO2007* reference case forecast future electricity prices.	Reflects the *AEO2009* reference case to forecast future electricity prices.
Maintenance Costs	Labor and material costs associated with maintaining the beverage vending machines (*e.g.,* cleaning heat exchanger coils, checking refrigerant charge levels, lamp replacement) included annualized costs of two refurbishment cycles.	Updated basic maintenance cost to 2008$. Based on industry comment on the ANOPR, included an updated annualized cost of one refurbishment/remanufacturing cycle.
Repair Costs	Labor and material costs associated with repairing or replacing components that have failed.	Updated costs to 2008$.
Equipment Lifetime	Age at which the beverage vending machine is retired from service (estimated to be 14 years).	Based on industry comment on the ANOPR, reduced average service life to 10 years, with 15 years as a maximum.
Discount Rate	Rate at which future costs are discounted to establish their present value to beverage vending machine purchasers.	Updated discount rates for all classes of purchasers based on weighted average cost of capital figures from 2008.
Rebound Effect	Rebound effect was not taken into account in the LCC analysis.	No change.
Analysis Period	The time span over which DOE calculated the LCC (*i.e.,* 2012–2042).	No change.

The following sections contain brief discussions of the methods underlying each input and key assumption in the LCC analysis.

1. Manufacturer Selling Price

The ''baseline MSP'' is the price manufacturers charge to either a wholesaler/distributor or very large customer for beverage vending machines meeting baseline efficiency levels. DOE developed the baseline MSPs using a cost model (detailed in chapter 5 of the TSD). DOE used the

efficiency level closest to ENERGY STAR Tier 1 as the baseline in the NOPR analysis. The baseline efficiency level represents the least efficient equipment likely to be sold in 2012.

DOE developed MSPs for the two equipment classes consisting of three possible equipment sizes. Not all covered equipment sizes have shipments of more than a few percent of the total.[21] (See chapter 10 of the TSD.) DOE estimated the MSPs for Class A and Class B equipment at the three representative rated volumes between the baseline efficiency level and up to seven more efficient levels. See chapter 5 of the TSD for details.

2. Increase in Selling Price

The standard level MSP increase is the change in MSP associated with producing equipment at lower energy consumption levels to meet higher standards. DOE developed MSP increases associated with decreasing equipment energy consumption (or higher efficiency) levels in the engineering analysis. See chapter 5 of the TSD for details. DOE developed MSP increases as a function of equipment energy consumption for each equipment class.

3. Markups

As discussed earlier, overall markups are based on one of three distribution channels for beverage vending machines. The distribution channels defined in the ANOPR were also used for the NOPR analysis, but DOE modified the relative fractions of shipments through each distribution channel based on input from interested parties. Based on input received by DOE, site owners purchase approximately 5 percent of equipment from wholesaler/distributors, vending machine operators purchase 10 percent of equipment from wholesaler/distributors, and beverage bottler/distributors purchase 85 percent of equipment directly from manufacturers. See chapter 10 of the TSD for details.

4. Installation Costs

DOE derived installation costs for beverage vending machines from the U.S. Bureau of Labor Statistics (BLS) data.[22] BLS provides median wage rates for installation, maintenance, and repair occupations that reflect the labor rates for each State. These data allow DOE to compute State labor cost indices relative to the national average for these occupations. DOE incorporated these cost indices into the analysis to capture variations in installation cost by location. DOE calculated the installation cost by multiplying the number of person-hours by the corresponding labor rate as reported by Foster-Miller, Inc.[23] Foster-Miller data are more specific to the beverage vending machine industry and service calls, and were used whenever possible. DOE decided that the installation costs (including overhead and profit) represent the total installation costs for baseline equipment. Because data were not available to indicate how installation costs vary by class or efficiency, DOE considered installation costs to be fixed and independent of equipment cost or efficiency. Although the LCC spreadsheet allows for alternative scenarios, DOE did not find a compelling reason to change its basic premise for the NOPR analysis. See chapter 8 of the TSD for details.

As described earlier, the total installed cost is the sum of the equipment purchase price and installation price. DOE derived the customer equipment purchase price for any given efficiency level by multiplying the baseline MSP by the baseline markup and adding to it the product of the incremental MSP and incremental markup. Because MSPs, markups, and sales taxes can differ depending on location, the resulting total installed cost for a particular efficiency level will not be a single-point value, but a distribution of values. DOE used a Monte-Carlo analysis [24] to determine this distribution of values. See chapter 8 of the TSD for details.

5. Energy Consumption

DOE based its estimate of the annual electricity consumption of beverage vending machines on the energy use characterization described in section IV.D. DOE did not change the ANOPR methodology. See chapters 7 and 8 of the TSD for details.

6. Electricity Prices

Electricity prices are necessary to convert the electric energy savings into energy cost savings. Because of the wide variation in electricity consumption patterns, wholesale costs, and retail rates across the country, it is important to consider regional differences in electricity prices. DOE divided the continental United States into the 50 States and the District of Columbia. DOE used reported average effective commercial electricity prices which are the average commercial prices in each state, multiplied times a factor that adjusts the price to account for the fact that different types of commercial customers historically have higher or lower prices than average. (See chapter 8 of the TSD for details.) Effective commercial prices were estimated for four of the six building types. Lower industrial electricity prices were assumed to apply to the manufacturing plants and Federal facilities. State level commercial and industrial prices were collected from the EIA publication, ''State Energy Consumption, Price, and Expenditure Estimates (SEDS).'' [25] The latest available prices from this source are for 2008. See chapter 8 of the TSD for details.

Different kinds of businesses use electricity in different amounts at different times of the day, week, and year, and therefore face different effective prices. To make this adjustment, DOE used the 2003 CBECS data set to identify the average prices that the four kinds of commercial businesses in this analysis pay compared with the average prices all commercial customers pay. (DOE assumed manufacturing and Federal facilities pay the average industrial price.) Once the building type prices are adjusted, the resulting estimated prices paid become the electricity prices used in the analysis. To obtain a weighted average national price, the prices paid by each building in each state are weighted by the estimated sales of beverage vending machines in each state to each prototype building type (U.S. Census Bureau 2002, 2004a–2004c). The state/building type weights are the probabilities that a given beverage vending machine shipped will be operated within a given price. For evaluation purposes, the prices and weights can be depicted as a cumulative probability distribution. The effective prices range from approximately 5 cents per kWh to approximately 30 cents per kWh. This approach includes regional

[21] Comments received at the ANOPR stage from interested parties indicated that small volume machines were never more than about 10 percent of the total (Royal Vendors, No. 29, p. 141); that small machines are financially unattractive (Coca-Cola, No. 29, p. 141); and that shipments range from 10 percent medium to 100 percent medium machines, depending on the manufacturer, with the rest being large (Royal Vendors, No. 29, pp. 141–142).

[22] Bureau of Labor Statistics, Occupational Employment and Wage Estimates (May 2007). Available at *http://www.bls.gov/oes/oes_dl.htm.*

[23] Foster-Miller, Inc. ''Vending Machine Service Call Reduction Using the VendingMiser.'' Report BAY–01197. Foster-Miller, Inc., Waltham, MA. February 18,2002.

[24] The Monte-Carlo analysis is a numerical simulation approach using random values from known statistical distributions.

[25] *http://www.eia.doe.gov/emeu/states/_seds.html.*

variations in energy prices and provides for estimated electricity prices suitable for the target market, yet reduces the overall complexity of the analysis. Chapter 8 of the TSD describes the development and use of State-average electricity prices by building type in more detail.

7. Electricity Price Trends

The electricity price trend provides the relative change in electricity prices until 2030. Estimating future electricity prices is difficult, especially considering that many States are attempting to restructure the electricity supply industry. DOE uses the most recent *AEO* reference case to forecast energy prices for standards rulemakings. DOE applied the *AEO2009* reference case as the default scenario and extrapolated the trend in values from 2020 to 2030 of the forecast to establish prices for 2030 to 2042. This method of extrapolation is in line with methods the EIA uses to forecast fuel prices for the Federal Energy Management Program (FEMP). DOE intends to update its analysis for the final rule to reflect the *AEO2009* electricity price forecasts when final versions are available.

8. Repair Costs

The repair cost is the cost to the customer of replacing or repairing beverage vending machine components that have failed. DOE based the annualized repair cost for baseline efficiency equipment on the report ''Vending Machine Service Call Reduction Using the VendingMiser,'' [26] and adjusted the cost to 2008 prices. Because data were not available to indicate how repair costs vary with equipment efficiency, DOE considered two scenarios: (1) repair costs that varied in direct proportion with the manufacturer price of the equipment, and (2) repair costs that did not increase with efficiency.

DOE used the first scenario as the default annualized repair cost scenario in the LCC and PBP analyses. Spreadsheets can be used to calculate LCC and PBP based on the second scenario as well. See chapter 8 of the TSD for details.

9. Maintenance Costs

DOE estimated annualized maintenance costs for beverage vending machines from data provided by Coca-Cola at the ANOPR public meeting. Coca-Cola estimated that average equipment maintenance costs are $98.20 (2008$) for preventive maintenance for both beverage vending machine classes. In addition to routine maintenance, industry contacts stated that most beverage vending machines are fully refurbished every 5 years at an average cost of approximately $550. DOE calculated the annual cost of refurbishment by assuming one refurbishment (in year five), and then annualizing the present value of the cost using the discount rate that applied to the business type owning the beverage vending machine. DOE added the two maintenance cost components to produce an overall annual maintenance cost of approximately $154 (2008$). Because data are not available on how maintenance costs vary with equipment efficiency, DOE held maintenance costs constant even as equipment efficiency increased. See chapter 8 of the TSD for details.

10. Lifetime

DOE defined lifetime as the age when a beverage vending machine unit is retired from service. DOE based the lifetime on comments it received during the ANOPR. DOE concluded that a typical lifetime is 10 years and a maximum lifetime is 15 years. Beverage vending machine equipment is typically replaced when buildings are renovated about every 10 years, which is before the equipment would have physically worn out. As a result, there is a used-equipment market for these products. Because the salvage value to the original purchaser is very low, DOE did not take this value into account in the LCC analysis. Chapter 3 of the TSD contains a discussion of equipment life.

11. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE derived discount rates for the LCC analysis by estimating the cost of capital for companies that purchase beverage vending machines. The cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. For most companies, the cost of capital is the weighted average of the cost to the company of equity and debt financing. DOE estimated the cost of equity financing with the Capital Asset Pricing Model (CAPM), which is among the most widely used models to estimate such costs. CAPM considers the cost of equity to be proportional to the amount of systematic risk for a company. The cost of equity financing tends to be high when a company faces a large degree of systematic risk and low when the company faces a small degree of systematic risk.[27]

To estimate the weighted average cost of capital (WACC; defined as the weighted average cost of debt and equity financing) of purchasers, DOE used a sample of companies involved in the six ownership categories, according to their type of activity. DOE sought financial information for all firms in the full sample involved in the seven types of businesses drawn from a database of 7,460 U.S. companies on the Damodaran Online Web site.[28] In cases where one or more of the variables needed to estimate the discount rate was missing or could not be obtained, DOE discarded the firm from the analysis. Overall, it discarded about 36 percent of the firms in the full database for this reason, resulting in a final count of 4,139 firms. This WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and thus depreciation due to more expensive equipment, on the overall tax status. See chapter 8 of the TSD for details.

DOE used the final sample of 4,139 companies to represent beverage vending machine purchasers. For each company in the sample, DOE derived the cost of debt, percent debt financing, and systematic company risk from information on the Damodaran Online Web site. Damodaran estimated the cost of debt financing from the long-term government bond rate (4.39 percent) and the standard deviation of the stock price. DOE then determined the weighted average values for the cost of debt, range of values, and standard deviation of WACC for each category of the sample companies. Deducting expected inflation from the cost of capital provided estimates of real discount rate by ownership category.

The above methodology yielded the following average after-tax discount rates, weighted by the percentage shares of total purchases of beverage vending machines: (1) 5.54 percent for bottlers and distributors, (2) 6.25 percent for manufacturing facilities, (3) 4.81 percent for office and health care businesses, (4)

[26] Foster-Miller, Inc. ''Vending Machine Service Call Reduction Using the VendingMiser.'' Report BAY–01197. Foster-Miller, Inc. Waltham, MA. February 18, 2002.

[27] Aswath Damodaran, Leonard N. Stern School of Business, New York University. Available at *http://www.stern.nyu.edu/~adamodar/New_Home_Page/data.html.* Accessed December 15, 2008. See also the Investopedia Web site definition of Beta, the measure of such volatility: *http://www.investopedia.com/terms/b/beta.asp.* Accessed April 1, 2009.

[28] Aswath Damodaran, Leonard N. Stern School of Business, New York University. Available at *http://www.stern.nyu.edu/~adamodar/New_Home_Page/data.html.* Accessed December 15, 2008.

6.00 percent for retail stores, (5) 2.35 percent for schools and colleges, (6) 3.03 percent for military bases, and (7) 5.23 percent for all other types of businesses.[29] See chapter 8 of the TSD for details.

12. Payback Period

The PBP is the amount of time it takes the customer to recover the incrementally higher purchase cost of more energy efficient equipment as a result of lower operating costs. Numerically, the PBP is the ratio of the increase in purchase cost (*i.e.,* from a less efficient design to a more efficient design) to the decrease in annual operating expenditures. This type of calculation is known as a ''simple'' PBP because it does not take into account changes in operating cost over time or the time value of money; that is, the calculation is done at an effective discount rate of 0 percent.

The equation for PBP is

$$PBP = \Delta IC/\Delta OC$$

Where:
PBP = payback period in years,
ΔIC = difference in the total installed cost between the more efficient standard level equipment (energy consumption levels 2, 3, etc.) and the baseline (energy consumption level 1) equipment, and
ΔOC = difference in annual operating costs.

The data inputs to the PBP analysis are the total installed cost of the equipment to the customer for each energy consumption level and the annual (first-year) operating costs for each energy consumption level. The inputs to the total installed cost are the equipment price and installation cost. The inputs to the operating costs are the annual energy cost, annual repair cost, and annual maintenance cost. The PBP uses the same inputs as the LCC analysis, except that electricity price trends and discount rates are not required. Since the PBP is a ''simple'' (undiscounted) payback, the required electricity cost is only for the year in which new energy conservation standards take effect—in this case, 2012. The electricity price used in the PBP calculation of electricity cost was the price projected for 2012, expressed in 2008$, but not discounted to 2008. Discount rates are not used in the PBP calculation.

As discussed in section III.D.2, 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. However, as stated in section III.D.2, DOE does not rely on the rebuttable presumption payback criteria when examining potential standard levels, but does consider it as part of a full analysis that includes all seven relevant statutory criteria under 42 U.S.C. 6295(o)(2)(B)(i).

F. Shipments Analysis

DOE developed forecasts of the number of units shipped for the base case and standards cases and included those forecasts in the NES spreadsheet. The shipments portion of the spreadsheet forecasts shipments of beverage vending machines from 2012 to 2042. DOE developed shipments forecasts for the two equipment classes by accounting for the shipments replacing the existing stock of beverage vending machines in new commercial floor spaces and old equipment removed through demolitions. Chapter 10 of the TSD provides additional details on shipments forecasts.

The shipments analysis is a description of beverage vending machine stock flows as a function of year and age. The shipment analysis treats each of the two classes of equipment independently, such that future shipments in any one class are unaffected by shipments in the other equipment class. In addition, the relative fraction of shipments in each equipment class compared to all beverage vending machine shipments is assumed to be constant over time. DOE recognizes that a business or a beverage vending machine owner can choose to use different classes of beverage vending machines to sell the same product if the equipment is in the required temperature range and is suitable for the environment in which the equipment will be placed. The decision to adopt one equipment class over another within the same temperature range will depend on first costs, operating costs, machine location (*e.g.,* outdoors versus indoors), and the perceived ability to merchandise product.

DOE received many comments on the shipment analysis and assumptions in the ANOPR. Many comments addressed the declining size of the beverage vending machine market. Royal Vendors estimate that the current beverage vending machine stock is about 2.3 or 2.5 million units. Further, Royal Vendors commented that the population of machines is decreasing and that replacements purchased are less than ''normal shrinkage.'' (Royal Vendors, No. 32 at p. 1) Dixie-Narco stated that a significant number of machines are being pulled out of the marketplace, partly because of the number of locations (particularly schools) that no longer allow vending machines. (Dixie-Narco, No. 29 at p. 44) Coca-Cola said that it has removed between 200,000 and 250,000 beverage vending machines since 2006 and that future shipments will only be replacements. (Coca-Cola, No. 29 at p. 140) PepsiCo agreed that the number of machines is decreasing and it doesn't see this trend reversing anytime soon. (PepsiCo, No. 29 at pp. 43–44) It attributed this, in part, to the ''very high cost'' of vandalism. NAMA also noted that there has been a decline in beverage vending machine sales over the last 5 or 6 years. NAMA attributed this to the removal of vending machines from school districts. (NAMA, No. 29 at pp. 48–49) The Joint Comment recommended that DOE conduct an independent annual sales forecast of equipment, stating that it was not clear why school district soda bans would result in the removal of vending machines rather than replacing sodas with healthier beverages in existing machines. (Joint Comment, No. 34 at p. 2) EEI suggested that DOE obtain data to monitor the downward trend in shipments and incorporate any observed reductions of the market into the analysis. (EEI, No. 37 at p. 2) EPA offered to share aggregated shipment data of ENERGY STAR qualified equipment with DOE. (EPA, No. 29 at p. 48)

DOE also received input on sales of new and replacement equipment. Royal Vendors stated that the overall current stock is approximately 90 percent Class B machines and 10 percent Class A machines, of which it builds large and medium Class A machines. However, trends are changing. In the future, the overall stock will more closely resemble ratios of 60/40 or 50/50 between Class A and Class B machines. (Royal Vendors, No. 29 at p. 139 and No. 29 at pp. 163–167). This data was also confirmed by data from The Cadmus Group (2006).[30]

DOE has updated its shipments model for the NPV analysis to reflect the comments it received. The model now reflects that there is zero growth in the number of vending machines and that new machines will only replace old and

[29] These discount rates are what private companies pay as beverage vending machine purchasers. Government agencies use 3-percent and 7-percent discount rates for economic calculations.

[30] Cadmus Group. 2006. ''Saving Energy in Vending Machines: Opportunities for the Regional Technical Forum.'' Presentation for the Northwest Power Conservation Council. Available at *http://www.nwcouncil.org/energy/rtf/meetings/2006/2006_09.* Accessed on January 5, 2009.

retired machines. DOE also updated its shipments analysis model to reflect more closely comments on the breakdown of shipments between equipment classes as well as the different sizes.

Dixie-Narco commented that it currently has kits listed on the EPA Web site to upgrade existing machines to meet ENERGY STAR Tier 2. (Dixie-Narco, No. 29 at pp. 90–91) DOE accepts the comment and has assumed that a high percentage of the machines shipped in 2012 in the base case shipment forecast will meet ENERGY STAR Tier 2 levels even without energy conservation standards.

The results of the shipments analysis are driven primarily by historical shipments data for the two equipment classes of beverage vending machines under consideration. The model estimates that, in each year, the existing stock of beverage vending machines either ages by one year or is worn out and replaced. In addition, new equipment can be shipped into new commercial building floor space and old equipment can be removed through demolitions. DOE chose to analyze all efficiency levels analyzed in the LCC in the NIA. DOE determined shipments forecasts for all levels analyzed in the NIA and NPV analysis.

Because several different types of businesses own beverage vending machines and use them in a variety of locations, machines are divided into several market segments. Table IV–7 gives the business locations and the approximate size of the market segments from 2002 to 2005.

TABLE IV—7 MARKET SEGMENTS FOR THE BEVERAGE VENDING MACHINES (2004–2007)

	Percent of machines
Business Location:	
Manufacturing	36.2
Offices	19.5
Retail	8.0
Schools/Colleges	13.0
Health Care	6.2
Hotels/Motels	3.6
Restaurants/Bars/Clubs	0.7
Correctional Facilities	2.1
Military Bases	3.0
Other	7.8
Total	100.0
Ownership:	
Bottlers and Vendors	95.0
Business Owned	5.0
—Manufacturing	1.5
—Offices and Health Care	1.4
—Retail/Restaurants/Bars/Clubs	0.8
—Schools, Colleges, and Public Facilities (including Correctional)	0.8
—Military Bases	0.4
—Other (including hotels/motels)	0.1
—Site Owned	5.0
Total	100.0

Table IV–8 shows the forecasted shipments of the three typical sizes of beverage vending machines for Class A and Class B units for selected years and cumulatively between 2012 and 2042. As equipment purchase price increases with higher efficiency levels, a drop in shipments could occur relative to the base case. On the other hand, as annual energy consumption is reduced, equipment sales could increase due to more frequent installations and use of beverage vending machines by retailers. DOE has no information to calibrate either relationship. Therefore, although the spreadsheet allows for changes in projected shipments in response to efficiency increases or energy consumption decreases, DOE presumed for the NOPR analysis that shipments would not change in response to the changing TSLs. Table IV–8 also shows the cumulative shipments for the 31-year period between 2012 and 2042 for all beverage vending machines. Comments from the ANOPR public meeting indicated that there has been a substantial decrease in shipments since 2000 and that future shipments are not expected to increase for the foreseeable future. These shipments are entirely for replacements, but the stock of beverage vending machines has also been declining at a significant rate. DOE has estimated a current level of shipments of about 90,000 units per year. This rate is consistent with observed declines in stock, expected retirement rates based on stated stock lifetimes, and extra removals due to vandalism and other causes, as stated by interested parties. Consistent with public comment, these shipment rates (which equals replacements) are assumed to be constant through 2042, which results in a continuing decline in the stock of beverage vending machines from recent levels of about 2.4 million units to a level of about 944,000 units by 2020, at which point the stock stabilizes. Chapter 10 of the TSD provides additional details on the shipments analysis.

TABLE IV—8 FORECASTED SHIPMENTS FOR BEVERAGE VENDING MACHINES (BASELINE EFFICIENCY, LEVEL 1) FOR SELECTED YEARS

[Thousands of units shipped]

Equip. class	Size	Thousands of units shipped								
		2012	2015	2020	2025	2030	2035	2040	2042	Cumulative shipments* *2012–2042*
A	L	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	383.6
A	M	37.1	37.1	37.1	37.1	37.1	37.1	37.1	37.1	1,150.9
A	S	.....	.....	.....	.....	.....	.....	.....	.....	.....
B	L	10.1	10.1	10.1	10.1	10.1	10.1	10.1	10.1	313.9
B	M	30.4	30.4	30.4	30.4	30.4	30.4	30.4	30.4	941.6
B	S	.....	.....	.....	.....	.....	.....	.....	.....	.....

* The cumulative shipments do not equal the totals across each row because all years from 2012 to 2042 are included in the calculation.

G. National Impact Analysis

The NIA assesses future NES and the national economic impacts of different efficiency levels of beverage vending machines. The analysis measures economic impacts using the NPV metric (*i.e.,* future amounts discounted to the present) of total commercial customer costs and savings expected to result from new standards at specific efficiency levels. For the NOPR analysis,

DOE used the same spreadsheet model used in the ANOPR to calculate the energy savings and the national economic costs and savings from new standards, but with updates to specific input data.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. DOE examined sensitivities by applying different scenarios. DOE used the NES spreadsheet to calculate national energy savings and NPV using the annual energy consumption and total installed cost data from the LCC analysis and estimates of national shipments for the two equipment classes. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV of benefits for both beverage vending machine classes from 2012 to 2057. The forecasts provided annual and cumulative values for all four output parameters.

DOE calculated the NES by subtracting energy use under a standards scenario from energy use in a base case (no new standards) scenario. Energy use is reduced when a unit of beverage vending machine in the base case efficiency distribution is replaced by a more efficient unit. Energy savings from this replacement for each equipment class are the same national average values as calculated in the LCC and PBP spreadsheet on a per-unit basis. Table IV–9 shows key inputs to the NIA. In the NIA analysis for the NOPR, DOE did not include a rebound effect. As the ANOPR discussed, a rebound effect occurs when a piece of equipment that is made more efficient is used more intensively, so that the expected energy savings from the efficiency improvement do not fully materialize. Because beverage vending machines operate on a 24-hour basis to maintain adequate conditions for the merchandise being retailed, a rebound effect resulting from increased refrigeration energy consumption seemed unlikely. Thus, DOE did not account for a rebound effect in the LCC analysis. There were no comments on this issue. Chapter 11 of the TSD provides additional information about the NES spreadsheet.

On the topic of shipments by efficiency levels, Coca-Cola commented that, essentially, all machines will be in the same efficiency class, which is the optimal point between price and performance. (Coca-Cola, No. 29 at p. 148) PepsiCo stated that every machine it approves for purchase must meet ENERGY STAR Tier 2. This includes purchases by PepsiCo bottlers as well. (PepsiCo, No. 29 at p. 149) Dixie-Narco stated that vending distributors (or operators and independent bottlers) do not mandate ENERGY STAR Tier 2, but that they are only a small part of the business. (Dixie-Narco, No. 29 at pp. 150–152) USA Technologies commented that much of the industry is already meeting Tier 2 and that 80 to 90 percent of the machines sold are probably at the Tier 2 levels (USA Technologies, No. 29 at pp. 101–102).

DOE understands that the major bottlers that purchase over 85 percent of the new machines require ENERGY STAR Tier 2, which went into effect on July 1, 2007. Therefore, most of the machines that will be purchased in 2012 when the new standards take effect are expected to meet Tier 2 levels. In response to the input received, DOE has changed the distribution of efficiency levels to reflect an estimate of 90 percent of the market meeting ENERGY STAR Tier 2 levels by 2012 in the base case market efficiency distribution. DOE does not have information on how the distribution of efficiency levels might change over the analysis period (2012 to 2042) and therefore assumed that the distribution in 2012 remained constant. See section IV.G.1 for more details.

Regarding the period of the rulemaking analysis, EEI commented that DOE should consider using a 20-year analytical timeframe if typical machines only have a 10-year lifetime and the analysis covers ''two lifetimes.''

The Department of Energy's appliance standards program is conducted pursuant to Title III, Parts A and A–1 of EPCA (42 U.S.C. 6291–6317). The program includes consumer products, such as refrigerators and freezers, central air conditioners and central air conditioning heat pumps, furnaces and water heaters, and certain commercial and industrial equipment, including electric motors and commercial heating and air conditioning equipment and water heaters.

EPCA directs DOE to conduct a series of rulemakings to consider whether to amend the existing energy conservation standards. EPCA also directs DOE to set any new standard such that the maximum improvement in energy efficiency is achieved that is technologically feasible and economically justified. In addition, the amount of energy saved must be significant. (42 U.S.C. 6296(o)(2)) DOE calculates the net present value (NPV) of new or amended standards to estimate the impacts of standards on the nation. In performing the NPV analysis for the first energy conservation standards rulemakings, DOE selected a 30-year analysis period, beginning on the effective date of the standard, because it closely matched the lifetime of the longest lived products among the products being considered for standards. Matching the lifetime of the longest lived products allows for a full turnover of the stock.[31] In subsequent years, for the next few rulemakings, DOE used the same analysis end-date as the initial rulemakings, but with the appropriate start-of-standard date, resulting in a shorter analysis period. Then, in the 1990's rulemakings, DOE found that using the same end-date of the analysis would result in analyses that could not capture the full impact of amended standards. As a result, DOE determined it was necessary to change the end-date of the analyses. DOE settled on the 30-year analysis period, which allows DOE to capture the full life of any product that was shipped in the first year in which that standard became effective. Because products have varying lifetimes, DOE uses a 30-year analysis period to maintain a consistent time frame to compare the energy savings and economic impacts from all the standards rulemakings. For consistency and for ease in comparing results across rulemakings, DOE settled on a 30-year analysis period for subsequent rulemakings.

DOE believes that using a 30-year analysis period is appropriate. In order to compare energy savings for residential product classes or commercial equipment classes across appliance rulemakings where the various products and equipment classes have different lifetimes, DOE must use at least the lifetime of the longest-lived product or equipment type for assessment, since the annual energy consequences of improving the longest-lived residential products or commercial equipment would not be known until all of the market for such product or equipment consisted of improved units. That would not happen until the last of the pre-standard equipment is retired. Thirty years is a practical estimate for that event for short- and long-lived equipment.

To compare economic costs and savings for products or equipment using discounted present value, it is common in economics to use the stream of benefits and costs over the lifetime of the equipment. In DOE energy conservation standards rulemakings, the outer limit for economic benefits and costs is established at the last year of life

[31] Refrigerators have an average lifetime of 19 years, and, based on industry data (Technical Support Document: Energy Efficiency Standards for Consumer Products: Refrigerators, Refrigerator-freezers, & Freezers, July 1995) on when refrigerators are retired, DOE estimates the refrigerators are retired as early as 13 years and as late as 24 years (*i.e.,* vintaging). DOE rounded up 24 years to 30 years in order to end the analysis on a decade.

of the oldest equipment purchased during the 30-year period used for energy savings comparisons.

There are also economic consequences for choosing different time periods over which to compare rules. As an example, consider two different time periods that could be used to compare two rules, one for 30-year equipment and one for 20-year equipment with identical costs and savings, but a shorter 20-year lifetime. If the 30-year period comparison period were shortened to 20 years to compare the two rules there would be significant consequences for NPV. Approximately one-third of the (undiscounted) savings from equipment with a 30-year life would be not counted, and the value of the savings would be reduced by about 15 percent at a 7 percent discount rate and by about 24 percent at a 3 percent discount rate. In addition, the investment required for shorter-life equipment that would have been required with a 30-year comparison would be ignored if the lifetime of the shorter-lived equipment is used to compare rulemakings. Therefore, DOE believes the 30-year analytical period enables it to fully capture the impacts of standards on the nation as well as to compare the relative economic impacts of different rulemakings. DOE will continue to use the 30-year analytical timeframe for this rulemaking. DOE will consider changes to the analytical period in other rulemakings, where appropriate; such as rulemakings for products with significantly shorter lifetimes (both average life and the life of the oldest product when retired).

On the topic of site-to-source energy conversion factor, EEI commented that DOE should account for the fact that more than 29 States now have renewable portfolio standards that will increase the amount of zero emissions and zero Btu electricity production sources by 2010, 2015, 2020, or 2025. These factors will reduce the overall heat rate faster than the *AEO* forecast, and DOE should not use fossil fuel power plant heat rates as a ''proxy'' for renewable electricity generation stations (EEI, No. 37 at p. 3).

DOE will continue to use *AEO2009* base electricity price and the price projections as long as no other credible and publicly available data that could be used to generate or revise the site-to-source energy conversion factors are made available to DOE.[32]

TABLE IV–9—SUMMARY OF NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUT

Input	ANOPR Description	Changes for NOPR
Shipments	Annual shipments from shipments model (chapter 9 of the ANOPR TSD, Shipments Analysis).	No growth in shipments; based on industry comments on the ANOPR, all shipments are replacements.
Effective Date of Standard	2012	No change.
Base Case Efficiencies	Distribution of base case shipments by efficiency level.	Efficiency mix changed based on industry comment.
Standards Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards case annual market shares by efficiency level remain constant over time for the base case and each standards case.	No change.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy consumption level per unit, which are established in chapter 7 of the ANOPR TSD, Energy Use Characterization.	No change.
Total Installed Cost per Unit	Annual weighted-average values are a function of energy consumption level (see chapter 8 of the ANOPR TSD).	No change.
Repair Cost per Unit	Annual weighted-average values increase with manufacturer's cost (chapter 8 of the ANOPR TSD).	No change.
Maintenance Cost per Unit	Annual weighted-average value equals $165.44 (chapter 8 of the ANOPR TSD).	Annual weighted-average value equals $154 (chapter 8 of the TSD).
Escalation of Electricity Prices	EIA *AEO2007* forecasts (to 2030) and extrapolation beyond 2030 (chapter 8 of the ANOPR TSD).	Updated to *AEO2009* forecasts.
Electricity Site-to-Source Conversion	Conversion varies yearly and is generated by DOE/EIA's NEMS* model (a time-series conversion factor that includes electric generation, transmission, and distribution losses).	Conversion varies yearly and is generated by DOE/EIA's NEMS model. Calculated marginal rates by year.
Discount Rate	3% and 7% real	No change.
Present Year	Future costs are discounted to 2008	Future costs are discounted to 2009

[32] DOE is committed to using the latest *AEO* forecast that is appropriate for its analysis. For example, if an updated *AEO* forecast is available for the final rule analysis, DOE will use that forecast. However, if an updated AEO forecast is published after the final rule analysis is completed, but before the final rule is published, the analysis will remain unchanged. DOE may conduct some sensitivity analyses, if appropriate, to determine if its conclusions would change based on the updated *AEO* forecast.

TABLE IV–9—SUMMARY OF NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUT—Continued

Input	ANOPR Description	Changes for NOPR
Rebound Effect	As explained in the LCC inputs section, DOE does not anticipate unit energy consumption to rebound above the levels used in the LCC analysis and passed to the NIA analysis. Further, the shipments model develops shipment projections to meet historical market saturation levels. The shipment model does not adjust shipments as a function of unit energy consumption levels, because DOE has no information with which to calibrate such a relationship.	No change.

1. Base Case and Standards Case Forecasted Efficiencies

Components of DOE's estimates of NES and NPV are the energy efficiencies of shipped equipment that DOE forecasts over time for the base case (without new standards) and for each standards case. The forecasted efficiencies represent the distribution of energy efficiency of the equipment under consideration that is shipped over the forecast period (*i.e.,* from the assumed effective date of a new standard to 30 years after the standard becomes effective).

The average annual energy consumption of the BVMs shipped in a given year depends on the per-unit energy consumption of BVM equipment at each efficiency level and the mix of efficiency levels of new units that is shipped in each year. Per-unit energy consumption at each efficiency level is determined in the energy use characterization. (See chapter 7 of the TSD.) The standards affect the mix of annual shipments by efficiency level as briefly described below. (See chapter 11 for details.)

Because no published data were available on market shares broken down by efficiency level, DOE developed estimates based on comments from interested parties at the ANOPR public meeting. These comments concerned approximate market shares of current shipments by equipment class and size, and approximate shipments by efficiency level for the base case (*i.e.,* without new standards).

DOE developed base case efficiency forecasts based on the estimated market shares by equipment class and efficiency level. Because there are no historical data to indicate how equipment efficiencies or relative equipment class preferences have changed over time, DOE assumed that forecasted market shares would remain frozen at the 2012 efficiency level until the end of the forecast period (30 years after the effective date or 2042).

For its estimate of standards case forecasted efficiencies, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that standards become effective (*i.e.,* 2012). Information available to DOE suggests that equipment shipments with efficiencies in the base case that did not meet the standard levels under consideration would roll up to meet the new standard levels. Also, DOE assumed that all equipment efficiencies in the base case that were above the standard levels under consideration likely would not be affected.

2. Annual Energy Consumption, Total Installed Cost, Maintenance Cost, and Repair Costs

The difference in shipments by equipment efficiency level between the base case and standards case was the basis for determining the reduction in per-unit annual energy consumption that could result from new standards. The beverage vending machine stock in a given year is the total number of beverage vending machines shipped from earlier years that survive in the given year. The NES spreadsheet model tracks the number of beverage vending machines shipped each year and estimates the total beverage vending machine stock for each year. The annual energy consumption by efficiency level for each equipment class comes from the LCC analysis on a per-unit basis. Similarly, the total installed, maintenance, and repair costs for each efficiency level for each equipment class analyzed in the LCC are on a per-unit basis. Using the total estimated shipments and total estimated stock by equipment class and efficiency level, DOE calculates the annual energy consumption for the beverage vending machine stock in each year, the maintenance and repair costs associated with the equipment stock, and the total installed costs associated with new shipments in each year based on the standards scenario and associated distribution of shipments by efficiency level.

As explained above, DOE assumes that all Class A machines and 75 percent of Class B machines are installed indoors and that 25 percent of Class B machines are located outdoors. To calculate a weighted energy use for all Class B machines, DOE added aggregated results based on State-by-State TMY2 weather station data to the annual energy consumption of the remaining 75 percent of Class B machines that are located indoors. DOE further aggregated energy consumption at the State level to arrive at the national average energy consumption, using the 2000 Census population data.[33] Table IV–10 presents the national average annual energy consumption figures for the three different sizes of Class B machines.

[33] The U.S. Census Bureau,''2000 Census,'' *http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=GCT-PH1&-context=gct&-ds_name=DEC_2000_SF1_U&-tree_id=4001&-format=US-9.* Accessed March 25, 2007.

TABLE IV–10—NATIONAL AVERAGE ANNUAL ENERGY CONSUMPTION FOR CLASS B MACHINES, BY EFFICIENCY LEVELS

Size	Annual energy consumption (all locations, kWh)						
	Level 1 (Baseline)	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
Large	2019	1890	1842	1760	1746	1561	1526
Medium	1925	1799	1731	1658	1645	1463	1431
Small	1724	1606	1505	1505	1495	1313	1285

Table IV–11 shows annual energy consumption for each size of Class A machine. National average energy consumption figures are identical to State energy consumption figures. These national average annual energy consumption figures are used in the subsequent LCC, PBP, and NES analyses.

TABLE IV–11—ANNUAL ENERGY CONSUMPTION FOR CLASS A MACHINES, ALL SIZES AND ALL LOCATIONS, BY EFFICIENCY LEVELS

Size	Average annual energy consumption (all locations, kWh)							
	Level 1 (Baseline)	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
Large	2464	2267	2099	1916	1785	1679	1610	1438
Medium	2383	2011	1916	1734	1529	1442	1383	1252
Small	2227	1924	1734	1551	1442	1361	1307	1186

DOE's energy use characterization assumes that there are no controls limiting display lighting or compressor operation in a beverage vending machine to certain hours of the day. As a result, the display lighting or compressor operation would not be affected by occupancy patterns in the building. However, using occupancy sensors and other controllers might reduce a vending machine's energy requirements during long periods of non-use, such as overnight and weekends. This occupancy controller option is often used when de-lamping a vending machine is not advisable (*i.e.,* when a vending machine does not have a captive audience or when de-lamping results in reduced vending sales revenues). Controllers can either be added on or enabled in certain beverage vending machines. See section IV.D for additional discussion of lighting controls and occupancy sensors. See chapter 7 in the TSD.

3. Escalation of Electricity Prices

DOE uses the most recent *AEO* reference case to forecast energy prices for standard rulemakings. DOE used the *AEO2009* reference case forecasts for future electricity prices, extended out to the end of the analysis period. DOE extrapolated the trend in values from 2020 to 2030 of the forecast to establish prices for the remainder of the analysis period. DOE intends to update its analysis for the final rule to reflect the *AEO2009* electricity price forecasts when final versions of these price forecasts are available.

4. Electricity Site-to-Source Conversion

The site-to-source conversion factor is a multiplier used for converting site energy, expressed in kWh, into primary or source energy, expressed in quadrillion Btu (quads). The site-to-source conversion factor accounts for losses in electricity generation, transmission, and distribution. For the ANOPR, DOE used site-to-source conversion factors based on U.S. average values for the commercial sector, calculated from *AEO2008,* Table A5. The average conversion factors vary over time because of projected changes in electricity generation sources (*i.e.,* the power plant types projected to provide electricity to the country). For the NOPR, DOE developed marginal site-to-source conversion factors that relate the national electrical energy savings at the point of use to the fuel savings at the power plant. These factors use the NEMS model and the examination of the corresponding energy savings from standards scenarios considered in DOE's utility impact analysis (chapter 14 of the TSD). The conversion factors vary over time because of projected changes in electricity generation sources and power plant dispatch scenarios. DOE used average U.S. conversion factors in the ANOPR because the utility impact analysis that is used to determine marginal conversion factors appropriate to efficiency standards for beverage vending machines occurs in the NOPR stage of the analysis.

To estimate NPV, DOE calculated the net impact each year as the difference between total operating cost savings (including electricity, repair, and maintenance cost savings) and increases in total installed costs (including MSP, sales taxes, distribution channel markups, and installation costs). DOE calculated the NPV of each TSL over the life of the equipment using three steps. First, DOE determined the difference between the equipment costs under the TSL and the base case to calculate the net equipment cost increase resulting from the TSL. Second, DOE determined the difference between the base case operating costs and the TSL operating costs to calculate the net operating cost savings from the TSL. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase to calculate the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) for beverage vending machines purchased on or after 2012 to the reference year 2009, and summed the discounted values to determine the NPV of a TSL. An NPV greater than zero shows net savings (*i.e.,* the TSL would reduce overall customer expenditures relative to the base case in present value terms). An NPV less than zero (*i.e.,* negative value) indicates that the TSL would result in a net increase in customer expenditures in present value terms.

H. Life-Cycle Cost Subgroup Analysis

In analyzing the potential impact of new or amended standards on commercial customers, DOE evaluates the impact on identifiable groups (*i.e.,* subgroups) of customers, such as

different types of businesses that may be disproportionately affected by an energy conservation standard. The subgroup used to perform this evaluation was manufacturing and/or industrial facilities that purchase their own vending machines. This customer subgroup is likely to include owners of high-cost vending machines because they have the highest capital costs and face the lowest electricity prices of any customer subgroup. These two conditions make it likely that this subgroup will have the lowest life-cycle cost savings of any major customer group.

The Joint Comment suggested that DOE focus its customer subgroup analysis on life-cycle costs rather than first-cost impacts. (Joint Comment, No. 34 at p. 6) DOE agrees with the Joint Comment and will continue in this rulemaking to focus the customer LCC subgroup analysis on examination of the life-cycle cost impacts. There will likely be first-cost increases with higher standard levels but also increased energy savings over the lifetime of the equipment. By examining LCC, DOE considers both impacts simultaneously for the designated subgroup in the LCC subgroup analysis, just as it does for the entire customer base in the LCC analysis.

DOE determined the impact on this beverage vending machine customer subgroup using the LCC spreadsheet model. DOE conducted the LCC and PBP analyses for beverage vending machine customers. The standard LCC and PBP analyses (described in section IV.E) include various types of businesses that own and use beverage vending machines. The LCC spreadsheet model allows for the identification of one or more subgroups of businesses, which can then be analyzed by sampling only each subgroup. The results of DOE's LCC subgroup analysis are summarized in section V.B.1.b and described in detail in chapter 12 of the TSD.

I. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impact of energy conservation standards on beverage vending machine manufacturers, and to calculate the impact of such standards on domestic manufacturing employment and capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the GRIM, an industry-cash-flow model customized for this rulemaking. The GRIM inputs are data characterizing the industry cost structure, shipments, and revenues. The key output is the INPV. Different sets of assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as equipment characteristics, characteristics of particular firms, and market and equipment trends, as well as an assessment of the impacts of standards on manufacturer subgroups. The complete MIA is outlined in chapter 13 of the TSD.

DOE conducted the MIA in three phases. Phase 1, Industry Profile, consisted of preparing an industry characterization. Phase 2, Industry Cash Flow Analysis, focused on the industry as a whole. In this phase, DOE used the GRIM to prepare an industry cash-flow analysis. DOE used publicly available information developed in Phase 1 to adapt the GRIM structure to analyze refrigerated beverage vending machine equipment energy conservation standards. In Phase 3, Subgroup Impact Analysis, DOE interviewed manufacturers representing the majority of domestic refrigerated beverage vending machine equipment sales. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company, and also obtained each manufacturer's view of the industry as a whole. The interviews provided valuable information DOE used to evaluate the impacts of energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

a. Phase 1, Industry Profile

In Phase 1 of the MIA, DOE prepared a profile of the refrigerated beverage vending machine equipment industry based on the market and technology assessment prepared for this rulemaking. Before initiating the detailed impact studies, DOE collected information on the present and past structure and market characteristics of the refrigerated beverage vending machine equipment industry. DOE collected such information as market share, equipment shipments, markups, and cost structure for various manufacturers. The industry profile includes further detail on the overall market, equipment characteristics, estimated manufacturer market shares, the financial situation of manufacturers, and trends in the number of firms of refrigerated beverage vending machine equipment industry.

The industry profile included a top-down cost analysis of refrigerated beverage vending machine equipment manufacturers that DOE used to derive equipment cost and preliminary financial inputs for the GRIM (*e.g.,* revenues; material, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and research and development (R&D) expenses). DOE also used public information to further calibrate its initial characterization of the industry, including U.S. Securities and Exchange Commission (SEC) 10–K reports, Standard & Poor's (S&P) stock reports, and corporate annual reports.

b. Phase 2, Industry Cash-Flow Analysis

Phase 2 of the MIA focused on the financial impacts of potential energy conservation standards on the industry as a whole. DOE used the GRIM to calculate the financial impacts of energy conservation standards on manufacturers. In Phase 2, DOE used the GRIM to perform a preliminary industry cash-flow analysis. In performing this analysis, DOE used the financial values determined during Phase 1 and the shipment scenarios used in the NIA analysis.

c. Phase 3, Subgroup Impact Analysis

Using average cost assumptions to develop an industry cash-flow estimate does not adequately assess differential impacts among manufacturer subgroups. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. DOE used the results of the industry characterization analysis (in Phase 1) to group manufacturers that exhibit similar characteristics.

DOE established two subgroups for the MIA corresponding to large and small business manufacturers of beverage vending machines. For the beverage vending machine manufacturing industry, small businesses, as defined by the Small Business Administration (SBA), are manufacturing enterprises with 500 or fewer employees. Based on identification of these two subgroups, DOE prepared one interview guide with questions related to beverage vending machine manufacturing for large and small manufacturers. DOE used the interview guide to tailor the GRIM to address unique financial characteristics of manufacturers of the industry. DOE interviewed companies from each subgroup, including subsidiaries and independent firms and public and private corporations. The purpose of the interviews was to develop an understanding of how manufacturer impacts vary by TSL. During the course of the MIA, DOE interviewed manufacturers representing the vast

majority of domestic beverage vending machine sales. Many of these same companies also participated in interviews for the engineering analysis. However, the MIA interviews broadened the discussion from primarily technology-related issues to include business-related topics. One objective was to obtain feedback from industry on the assumptions used in the GRIM and to isolate key issues and concerns. See chapter 13 of the TSD for details.

2. Discussion of Comments

In the ANOPR, DOE reported that manufacturers claimed higher energy conservation standards could deter some customers from buying higher margin units with more features. 73 FR 34130. The Joint Comment disagreed with this claim, stating that manufacturers have many options besides energy use to differentiate products. All these features have value to customers because they help sell more product or cut operating costs. (Joint Comment, No. 34 at pp. 6–7)

For the ANOPR, DOE reported some of the preliminary concerns manufacturers voiced during the initial engineering interviews. For the NOPR, DOE interviewed manufacturers and major customers and conducted market research to understand profitability in the beverage vending machine industry. DOE learned that the vast majority of equipment produced by manufacturers meets the same efficiency levels. In addition, the energy consumption of most equipment sold in the beverage vending machine industry is set by the specifications of the major purchasers of the equipment. Based on manufacturer interviews and the information found in the MIA, manufacturers design their equipment to meet this requirement of the large purchasers, but rarely exceed it. Because efficiency does not vary and the product designs are determined mainly by the major purchasers of the equipment, manufacturers typically do not earn a higher margin for additional features. Annual shipments are mainly determined by contracts with the major customers to replace a portion of retiring equipment. Additional features are unlikely to stimulate additional demand, especially if these features add costs to the purchaser or manufacturer. Due to split incentives, manufacturers may not earn a higher margin for equipment that reduces operating costs for the end-user, since these benefits are not directly conferred on the purchaser.

The Joint Comment stated that DOE provided an estimate for the life cycle of a beverage vending machine production line during the ANOPR. The Joint Comment also stated that the low end of this range is shorter than the time frame from the beginning of this rulemaking to the possible effective date of the standard. Thus, a manufacturer that chooses to anticipate a standard can reduce or eliminate standards-induced capital conversion costs. The commenters believe that DOE should not view capital conversion costs as a result of the regulation, but as a result of some manufacturers' failure to plan for standards. While manufacturers cannot know precise standards levels, the ANOPR analysis provides a very strong indication that standards at or near level 7 should be expected. (Joint Comment, No. 34 at p. 7)

In the ANOPR, DOE stated that a beverage vending machine production line has a life cycle of approximately 5 to 10 years in the absence of standards. 73 FR 34130. However, manufacturers would not be able to reduce or eliminate standards-induced capital conversion costs because a 5-year production line life cycle is shorter than the time frame between the initiation of this rulemaking and the possible effective date. In the GRIM, DOE incorporates annual research and development costs and the capital expenditures manufacturers would undertake regardless of standards. The INPV reported for the beverage vending machine industry incorporates the impacts due to new energy conservation standards. DOE separates recurring research and development and capital expenditures that occur regardless of energy conservation standards from equipment and capital conversion costs. Capital and equipment conversion costs capture the additional costs that manufacturers will face due to standards and are necessary to accurately calculate the impacts standards have on INPV. To minimize the costs that may be required to convert production lines to produce higher efficiency equipment, manufacturers will usually wait until standards are published. Manufacturers will not know the stringency of this standard until the publication of the final rule, which is scheduled for August 8, 2009. Finally, the energy conservation standard for this rulemaking applies to all equipment manufactured on or after 3 years of the publication of the final rule (42 U.S.C. 6295(v)(3)). This allows manufacturers 3 years after the publication date of the energy conservation standard levels to make any changes to production lines that would be required to comply with the new energy conservation standard. Since this preparation time is less than the lower end of the estimated beverage vending machine production line life cycle, DOE assumes that one-time capital conversion costs can be attributed to the new energy conservation standard level.

The Joint Comment questioned the assertion that stringent standards could cause production to be moved outside the United States. The Joint Comment noted that sourcing decisions are sensitive to the costs of production and product distribution, and not to the energy efficiency of the unit being produced (Joint Comment, No. 34 at p. 7).

DOE agrees that sourcing decisions are sensitive to the costs of production and product distribution. However, since the efficiency of equipment sold can directly affect production costs, DOE believes that the level of the new energy conservation standard could affect sourcing decisions. However, as noted in the Joint Comment, sourcing decisions are based on several factors, including many outside the scope of this rulemaking (*e.g.,* product distribution costs). Consequently, DOE does not speculate how standards will affect sourcing decisions.

3. Government Regulatory Impact Model Analysis

The GRIM analysis uses a standard annual cash-flow analysis that incorporates manufacturer selling prices, manufacturing production costs, shipments, and industry financial information as inputs. The analysis models changes in costs, distribution of shipments, investments, and associated margins that would result from new or amended regulatory conditions (in this case, standard levels). The GRIM spreadsheet uses a number of inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis (2008) and continuing to 2042. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period.

DOE used the GRIM to calculate cash flows using standard accounting principles and compare changes in INPV between a base case and various TSLs (the standards cases). Essentially, the difference in INPV between the base case and a standards case represents the financial impact of energy conservation standards on manufacturers. DOE collected this information from a number of sources, including publicly available data and interviews with manufacturers. See chapter 13 of the TSD for details.

4. Manufacturer Interviews

As part of the MIA, DOE discussed potential impacts of new energy conservation standards with

manufacturers responsible for more than 65 percent of the beverage vending machines on the market. These interviews were in addition to those DOE conducted as part of the engineering analysis. DOE used the interviews to evaluate the impacts of new energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels. Key issues that the manufacturers identified for DOE to consider in developing energy conservation standards are discussed in chapter 13 of the TSD.

5. Government Regulatory Impact Model Key Inputs and Scenarios

a. Base Case Shipments Forecast

The GRIM estimates manufacturer revenues based on unit shipment forecasts and the distribution by equipment class and efficiency. Changes in the efficiency mix at each standard level are a key driver of manufacturer finances. Consequently, DOE is seeking comment on the shipments forecast (section VII.E.2). For this analysis, the GRIM used the NES shipments forecasts from 2008 to 2042. Total shipments forecasted by the NES for the base case in 2012 are shown in Table IV–12 and further discussed in this section of today's notice and chapter 10 of the TSD. Using the equipment class shipment assumptions from the NES, the GRIM maintains total industry shipments consisting of 55 percent Class A equipment and 45 percent Class B equipment throughout the analysis period.

TABLE IV–12-TOTAL NES–FORECASTED SHIPMENTS IN 2012

[Number of Units]

Equipment class	Total industry shipments by equipment class
Class A	49,500
Class B	40,500

In the shipments analysis, DOE also estimated the distribution of efficiencies in the base case for beverage vending machines (chapter 10 of the TSD). Table IV–13 and Table IV–14 show examples of the distribution of efficiencies in the base case for a Class A medium-size and a Class B medium-size beverage vending machine.

TABLE IV–13—GRIM DISTRIBUTION OF SHIPMENTS IN THE BASE CASE FOR CLASS A MEDIUM-SIZED BEVERAGE VENDING MACHINES

TSL *kWh/day*	Baseline 6.10	TSL 1 5.27	TSL 2 4.75	TSL 3 4.25	TSL 4 3.95	TSL 5 3.73	TSL 6 3.58	TSL 7 3.25
Distribution of shipments percent	10	90	0	0	0	0	0	0

TABLE IV–14—GRIM DISTRIBUTION OF SHIPMENTS IN THE BASE CASE FOR CLASS B MEDIUM-SIZED BEVERAGE VENDING MACHINES

TSL *kWh/day*	Baseline 4.96	TSL 1 4.62	TSL 2 4.31	TSL 3 4.31	TSL 4 4.28	TSL 5 3.78	TSL 6 3.69
Distribution of Shipments percent	10	0	90	0	0	0	0

b. Standards Case Shipments Forecast

For each standards case, DOE assumed that shipments at efficiencies below the projected standard levels were most likely to roll up to those efficiency levels in response to an energy conservation standard. This scenario assumes that demand for high-efficiency equipment is a function of its price without regard to the standard level. See chapter 13 of the TSD for additional details.

c. Manufacturing Production Costs

DOE derived manufacturing production costs (MPCs) from manufacturing selling prices found in the engineering analysis. Using data from the U.S. Census Bureau to develop an industry cost structure, DOE disaggregated the financial components that comprise manufacturing selling price (production costs, SG&A, R&D, and profit). By summing the labor, overhead, materials, and depreciation portions of the manufacturing selling price, DOE estimated the manufacturing production costs for the analyzed equipment. Further discussion of how DOE calculated other GRIM financial inputs from publicly available information is found in chapter 13 of the TSD.

d. Manufacturing Markup Scenarios

To understand how baseline and more efficient equipment are differentiated, DOE reviewed manufacturer catalogs and information gathered by manufacturers. In the base case, DOE used the manufacturer selling prices from the engineering analysis. For the analysis, DOE considered different manufacturer markup scenarios for beverage vending machines. Scenarios were used to bound the range of expected equipment prices following new energy conservation standards. For each equipment class, DOE used the markup scenarios that best characterized the prevailing markup conditions and captured the range of market responses that could result from new energy conservation standards. DOE learned from interviews with manufacturers that the majority only offer one equipment line for each product class that meets the same efficiency level. Similar efficiency levels and the small number of product offerings in each product class generally mean that there is no difference in markup used to differentiate baseline equipment from premium equipment.

For the MIA, DOE considered two distinct markup scenarios: (1) The preservation-of-gross-margin-percentage scenario, and (2) the preservation-of-operating-profit scenario. Under the ''preservation-of-gross-margin-percentage'' scenario, DOE applied a single, uniform ''gross margin percentage'' markup across all efficiency levels. This scenario implies that as production cost increases with efficiency, the absolute dollar markup will increase. For this scenario, DOE used a markup that yielded the same manufacturer selling prices found in the engineering analysis. The implicit assumption behind the ''preservation-of-operating profit'' scenario is that the industry can only maintain its operating profit (earnings before interest and taxes) from the baseline after implementation of the standard (2012). The industry impacts occur in this

scenario when manufacturers expand their capital base and production costs to make more expensive equipment, but the operating profit does not change from current conditions. DOE implemented this markup scenario in the GRIM by setting the non-production cost markups at each TSL to yield approximately the same operating profit in both the base case and the standard case in the year after standard implementation (2012).

e. Equipment and Capital Conversion Costs

Energy conservation standards typically cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Equipment conversion costs, and (2) capital conversion costs. Equipment conversion costs are one-time investments in research, development, testing, and marketing, focused on making equipment designs comply with the new energy conservation standard. Capital conversion costs are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new equipment designs can be fabricated and assembled.

DOE assessed the R&D expenditures manufacturers would be required to make at each TSL. DOE obtained financial information through manufacturer interviews and aggregated the results to mask any proprietary or confidential information from any one manufacturer. DOE considered a number of manufacturer responses for beverage vending machines at each TSL. DOE estimated the total equipment conversion costs by gathering manufacturer responses, then weighting these responses by market share.

DOE also evaluated the level of capital conversion expenditures manufacturers would incur to comply with energy conservation standards. DOE used the manufacturer interviews to gather data on the level of capital investment required at each TSL. Manufacturers explained how different TSLs affected their ability to use existing plants, tooling, and equipment. From the interviews, DOE was able to estimate what portion of existing manufacturing assets would need to be replaced or reconfigured, and what additional manufacturing assets would be required to manufacture the higher-efficiency products.

The investment figures used in the GRIM can be found in section V.B.2 of today's notice. For additional information on the estimated product conversion and capital conversion costs, see chapter 13 of the TSD.

J. Utility Impact Analysis

The utility impact analysis estimates the effects of reduced energy consumption resulting from improved equipment efficiency on the utility industry. This utility analysis compares forecast results for a case comparable to the *AEO2008* reference case and forecasts for policy cases incorporating each of the beverage vending machine TSLs.

NPCC asked whether the utility impact analysis computes a national capital cost savings because of the change in new utility capacity from each standard level (NPCC, No. 29 at p. 196). DOE does compute the impact on total gigawatts (GW) of generation capacity in its utility impact analysis, but does not monetize changes in capital costs for building power plants.

DOE analyzed the effects of proposed standards on electric utility industry generation capacity and fuel consumption using a variant of EIA's NEMS. The NEMS–BT is run similarly to the *AEO2008* NEMS, except that beverage vending machine energy usage is reduced by the amount of energy (by fuel type) saved because of the TSLs. DOE obtained the inputs of the NES from the NES spreadsheet model. For the final rule, DOE intends to report utility analysis results using a version of NEMS–BT based on the *AEO2009* NEMS.

DOE conducted the utility analysis as policy deviations from the *AEO2008,* applying the same basic set of assumptions. In the utility analysis, DOE reported the changes in installed capacity and generation by fuel type that result for each TSL, as well as changes in end-use electricity sales. Chapter 14 of the NOPR TSD provides details of the utility analysis methods and results.

K. Employment Impact Analysis

Employment impact is one factor DOE considers in selecting a standard. Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees for beverage vending machine manufacturers, their suppliers, and related service firms. Indirect impacts are those changes of employment in the larger economy that occur because of the shift in expenditures and capital investment caused by the purchase and operation of more efficient beverage vending machines. The MIA in this rulemaking addresses only the direct employment impacts on manufacturers of beverage vending machines. Chapter 15 of the TSD describes other, primarily indirect, employment impacts.

Indirect employment impacts from beverage vending machine standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, as a consequence of (1) Reduced spending by end users on electricity (offset to some degree by the increased spending on maintenance and repair), (2) reduced spending on new energy supply by the utility industry, (3) increased spending on the purchase price of new beverage vending machines, and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor.

In developing this notice of proposed rulemaking, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy, called ImSET (Impact of Sector Energy Technologies) developed by DOE's Building Technologies Program. ImSET is a personal-computer-based, economic analysis model that characterizes the interconnections among 188 sectors of the economy as national input/output structural matrices using data from the U.S. Department of Commerce's 1997 Benchmark U.S. input-output table. The ImSET model estimates changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in various sectors of the economy. DOE estimated changes in expenditures using the NES spreadsheet. ImSET then estimated the net national indirect employment impacts of beverage vending machine efficiency standards on employment by sector.

The ImSET input/output model suggests that the proposed beverage vending machine efficiency standards could increase the net demand for labor in the economy and the gains would most likely be very small relative to total national employment. DOE therefore concludes that the proposed beverage vending machine standards are not likely to produce employment benefits that are sufficient to fully offset any adverse impacts on employment in the beverage vending machine industry. For more details on the employment impact analysis and its results, see chapter 15 of the TSD and section V.B.3.c of this notice.

L. Environmental Assessment

DOE has prepared a draft environmental assessment (EA) pursuant to the National Environmental Policy Act and the requirements under 42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a) to determine the environmental impacts of the standards being established in today's final rule. Specifically, DOE estimated the reduction in total emissions of CO_2 and NO_X using the NEMS–BT computer model. DOE calculated a range of estimates for reduction in Hg emissions using current power sector emission rates. 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.

The NEMS–BT is run similarly to the *AEO2008* NEMS, except the beverage vending machine 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 the standard is the difference between emissions estimated by NEMS–BT and the *AEO2008* reference case. The NEMS–BT tracks CO_2 and NO_X emissions using a detailed module that provides broad coverage of all sectors and includes interactive effects.

Sulfur Dioxide (SO_2)

The Clean Air Act Amendments of 1990 set an emissions cap on SO_2 for all power generation. Attaining this target is flexible among generators and is enforced through emissions allowances and tradable permits. In other words, with or without a standard, total cumulative SO_2 emissions will always be at or near the ceiling, while 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.

NO_X

NO_X emissions from 28 eastern States and the District of Columbia (D.C.) are limited under the Clean Air Interstate Rule (CAIR), published in the **Federal Register** on May 12, 2005. 70 FR 25162 (May 12, 2005). Although the rule has been remanded to EPA by the D.C. Circuit, it will remain in effect until it is replaced by a rule consistent with the Court's opinion in North Carolina v. EPA. Because all States covered by CAIR opted to reduce NO_X emissions through participation in cap-and-trade programs for electric generating units, emissions from these sources are capped across the CAIR region. As with the SO_2 emissions cap, energy conservation standards are not likely to have a physical effect on NO_X emissions in those States. However, the standards proposed in today's NOPR might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits if they were large enough. DOE believes that such standards would not produce such an impact because the estimated reduction in NO_X emissions or the corresponding increase in available allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_X.

In contrast, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by the CAIR, and these emissions could be estimated from NEMS–BT. As a result, DOE used the NEMS–BT to forecast emission reductions from the beverage vending machine standards that are considered in today's NOPR.

Though currently in effect, CAIR has been the subject of significant litigation. CAIR was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in its July 11, 2008, decision in *North Carolina* v. *Environmental Protection Agency.*[34] However, on December 23, 2008, the D.C. Circuit decided to allow the CAIR to remain in effect until it is replaced by a rule consistent with the court's earlier opinion.[35]

Mercury (HG)

Similar to SO_2 and NO_X, future emissions of Hg would have been subject to emissions caps under the Clean Air Mercury Rule (CAMR). The CAMR would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010, but was vacated by the D.C. Circuit in its February 8, 2008, decision in *New Jersey* v. *Environmental Protection Agency.*[36] DOE typically uses the NEMS–BT model to calculate emissions from the electrical generation sector; however, the 2008 NEMS–BT model is not suitable for assessing mercury emissions in the absence of a CAMR cap. Thus, DOE used a range of Hg emissions rates (in tons of Hg per energy per TWh produced) based on the *AEO2008.* Because the high end of the range of Hg emissions rates attributable to electricity generation are from coal-fired power plants, DOE based that emissions rate on the tons of mercury emitted per TWh of coal-generated electricity. DOE's low estimate assumed that future standards would displace electrical generation from natural gas-fired powered power plants. The low end of the range of Hg emissions rates is zero because natural gas-fired powered power plants have virtually no Hg emissions associated with their operations. To estimate the reduction in mercury emissions, DOE multiplied the emissions rates by the reduction in electricity generation associated with the standards proposed in today's NOPR.

Refrigerant Leaks

DOE received one comment regarding the treatment of refrigerant leaks during beverage vending machine production and end-use in which DOE was asked how it would analyze this issue in the environmental assessment. (EEI, No. 37 at p. 4) In response, DOE notes that it has no reliable information on the rates of refrigerant leaks during the production of and during operational life of beverage vending machines, and consequently did not conduct a quantitative analysis of environmental impacts from refrigerant leaks. DOE does not anticipate a significant change in shipments for beverage vending machines, significant changes in refrigerant use by the beverage vending machine manufacturers, or significant changes in refrigerant leakage rates as a result of new energy conservation standards. DOE does not have any information indicating that refrigerant leakage rates would vary by energy efficiency level.

M. Monetizing Carbon Dioxide and Other Emissions Impacts

DOE also calculated the possible monetary benefit of CO_2, NO_X, and Hg

[34] 531 F.3d 896 (D.C. Cir. 2008).

[35] *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008) (remand of vacatur).

[36] *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008).

reductions. Cumulative monetary benefits were determined using discount rates of 3 and 7 percent. DOE monetized reductions in CO_2 emissions due to the standards proposed in this NOPR based on a range of monetary values drawn from studies that attempt to estimate the present value of the marginal economic benefits (based on the avoided marginal social costs of carbon) likely to result from reducing greenhouse gas emissions. The marginal social cost of carbon is an estimate of the monetary value to society of the environmental damages of CO_2 emissions. This concept is used rather than compliance costs because CO_2 is not regulated. Several parties provided comments on the economic valuation of CO_2 for the NOPR.

On the treatment of emissions, Earthjustice made the following four statements:

(1) DOE cannot rationally weigh the economic benefit of reduced emissions unless it actually calculates the economic dimension of those emissions reductions. (Earthjustice, No. 38 at p. 2)

(2) DOE must evaluate the impact of vending machine standards on NO_X through a two-pronged approach, calculating both the effect on allowance prices under the NO_X SIP Call rule, where applicable, and the monetary value of avoided NO_X emissions. (Earthjustice, No. 38 at p. 3)

(3) Once DOE calculates the projected reductions in mercury emission, it must assign an appropriate economic value to those emissions. (Earthjustice, No. 38 at p. 3)

(4) Excluding CO_2 emissions reduction benefits from DOE's NPV analysis on the basis of uncertainty about their precise measure would be arbitrary and capricious. (Earthjustice, No. 38 at p. 4)

In addition, NRDC advocated that DOE monetize the value of CO_2 emissions and take that into account in the LCC analysis, using a price for carbon emissions based on EIA's analysis of the Lieberman-Warner bill. (NRDC, Public Meeting Transcript, No. 29 at p. 107)

In response to the ANOPR comments on monetization of emissions and how that is included in the DOE analyses, DOE notes that neither EPCA nor NEPA requires that the economic value of emissions reduction be incorporated in the LCC or NPV analysis of energy savings. Unlike energy savings, the economic value of the emissions reductions discussed by commenters is not priced in the marketplace. DOE has chosen to report these benefits separately from the net benefits of energy savings. A summary of the monetary results is shown in section V.B.6 of this notice. DOE will consider both values when weighing the benefits and burdens of standards.

With respect to NO_X, the proposed 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 believes that in the present case, such standards would not produce even 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.

V. Analytical Results

A. Trial Standard Levels

DOE analyzed seven energy consumption levels for Class A equipment and six energy consumption levels for Class B equipment in the LCC and NIA analyses. For the NOPR, DOE determined that each of these levels should be presented as a possible TSL and correspondingly identified seven TSLs for Class A and six TSLs for Class B equipment. For each equipment class, the range of TSLs selected includes the energy consumption level providing the maximum NES level for the class, the level providing the maximum NES while providing a positive NPV, the level providing the maximum NPV, and the level approximately equivalent to ENERGY STAR Tier 2. Many of the higher levels selected correspond to equipment designs that incorporate specific noteworthy technologies that can provide energy savings benefits. For Class A, DOE also included two intermediate efficiency levels to fill in significant energy consumption gaps between the levels identified above the ENERGY STAR Tier 2 equivalent level. For Class A equipment, the ENERGY STAR Tier 2 equivalent TSL level, TSL 1, allows for the highest energy consumption. For Class B, DOE included one trial standard level with energy consumption higher than that provided by ENERGY STAR Tier 2.

For the ANOPR, DOE proposed four candidate standard levels for each equipment class based on the levels that provided maximum energy savings, maximum efficiency level with positive LCC savings, maximum LCC savings, and the highest efficiency level with a payback of less than 3 years.

DOE preserved energy consumption levels from the ANOPR that met the same economic criteria in the NOPR, but also included the Tier 2 equivalency level and several additional TSLs. These additional levels either provide additional intermediate efficiency levels or include specific noteworthy technologies examined in the engineering analysis. Table V–1 and Table V–2 show the TSL levels DOE selected for the equipment classes and sizes analyzed. For Class A equipment, TSL 7 is the max-tech level for each equipment class. TSL 6 is the maximum efficiency level with a positive NPV at the 7-percent discount rate, achieved by incorporating an electronically commutated motor (ECM) condenser fan. TSL 5 is the efficiency level with the maximum NPV and maximum LCC savings, achieved by using an advanced refrigerant condenser design. TSL 4 is the level that first incorporated LED lighting as a design feature in the engineering analysis. TSL 3 and TSL 2 were intermediate efficiency levels chosen to bridge the gap between TSL 4, and the ENERGY STAR Tier 2 equivalent level, TSL 1.

For Class B equipment, TSL 6 is the max-tech level for each equipment size. TSL 5 is the level that first incorporated LED lighting as a design option in the engineering analysis. TSL 4 is the next highest efficiency level including incorporation of an ECM condenser fan motor. TSL 3 was achieved by using an advanced refrigerant condenser design. This TSL provided an NPV value of essentially 0, with total capital expenditures for new equipment balanced by total operating cost savings over the NIA analysis period, based on a 7-percent discount rate. TSL 2 is the ENERGY STAR Tier 2 level for Class B equipment. This TSL provided the maximum LCC savings and maximum NPV savings at a 7-percent discount rate. TSL 1, which provided an energy consumption level approximately 4 percent higher than TSL 2, was also included in the analysis. TSL 1 represented the first level incorporating an evaporator fan driven by an ECM in the engineering analysis.

As determined in the ANOPR, DOE chose to characterize the proposed TSL levels in terms of proposed equations that establish a maximum daily energy consumption (MDEC) limit through a linear equation of the following form:

$$MDEC = A \times V + B$$

Where:

A is expressed in terms of kWh/day/ft^3 of measured volume,

V is the measured refrigerated volume (ft^3) calculated for the equipment, and

B is an offset factor expressed in kWh/day.

Coefficients A and B are uniquely derived for each equipment class based on a linear equation passing between

the daily energy consumption values for equipment of different refrigerated volumes. For the development of the A and B coefficients, DOE used the energy consumption values shown in Table V–1 and Table V–2 for the medium and large equipment sizes within each class of beverage vending machine. DOE did not use the small equipment sizes in each class because information from the ANOPR indicated that there are no significant shipments of this equipment size. However, DOE seeks input from interested parties on whether the proposed linear equation used to describe the maximum daily energy consumption standards should be based on medium and large equipment (using two points); small, medium, and large equipment (three points); or some other possible weighting strategy. Results for using two points and three points are described in more details in chapter 9 of the TSD.

Chapter 9 of the TSD explains the methodology DOE used for selecting TSLs and developing the equations shown in Table V–3.

TABLE V–1—TRIAL STANDARD LEVELS FOR CLASS A EQUIPMENT EXPRESSED IN TERMS OF DAILY ENERGY CONSUMPTION

Size	Test metric	Trial standard level in order of efficiency							
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Engineering level	.....	1	5	*n/a	*n/a	6	7	9	11
Small	kWh/day	6.1	5.27	4.75	4.25	3.95	3.73	3.58	3.25
Medium	kWh/day	6.53	5.51	5.25	4.75	4.19	3.95	3.79	3.43
Large	kWh/day	6.75	6.21	5.75	5.25	4.89	4.60	4.41	3.94

*Not applicable. These levels established as intermediate points along the engineering cost curves.

TABLE V–2—TRIAL STANDARD LEVELS FOR CLASS B EQUIPMENT EXPRESSED IN TERMS OF DAILY ENERGY CONSUMPTION

Size	Test metric	Trial standard level in order of efficiency						
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Engineering level	.....	1	2	4	4	5	6	7
Small	kWh/day	4.96	4.62	4.31	4.31	4.28	3.78	3.69
Medium	kWh/day	5.56	5.2	4.99	4.76	4.72	4.22	4.12
Large	kWh/day	5.85	5.48	5.33	5.07	5.03	4.52	4.41

TABLE V–3—TRIAL STANDARD LEVELS EXPRESSED IN TERMS OF EQUATIONS AND COEFFICIENTS FOR EACH EQUIPMENT CLASS

Trial standard level	Test metric	Class A	Class B
Baseline	kWh/day	MDEC = 0.019 × V + 6.09	MDEC = 0.068 × V + 4.07.
TSL 1	kWh/day	MDEC = 0.062 × V + 4.12	MDEC = 0.066 × V + 3.76.
TSL 2	kWh/day	MDEC = 0.044 × V + 4.26	MDEC = 0.080 × V + 3.24.
TSL 3	kWh/day	MDEC = 0.044 × V + 3.76	MDEC = 0.073 × V + 3.16.
TSL 4	kWh/day	MDEC = 0.062 × V + 2.80	MDEC = 0.073 × V + 3.12.
TSL 5	kWh/day	MDEC = 0.058 × V + 2.66	MDEC = 0.070 × V + 2.68.
TSL 6	kWh/day	MDEC = 0.055 × V + 2.56	MDEC = 0.068 × V + 2.63.
TSL 7	kWh/day	MDEC = 0.045 × V + 2.42	n/a*.

*Not applicable. There is no TSL 7 for Class B machines.

B. Economic Impacts on Commercial Customers

1. Economic Impacts on Commercial Customers

a. Life-Cycle Cost and Payback Period

To evaluate the economic impact of the TSLs on customers, DOE conducted an LCC analysis for each TSL. More efficient beverage vending machines are expected to affect customers in two ways: annual operating expense is expected to decrease and purchase price is expected to increase. DOE analyzed the net effect by calculating the LCC. Inputs used for calculating the LCC include total installed costs (*i.e.,* equipment price plus installation costs), annual energy savings, average electricity costs by customer, energy price trends, repair costs, maintenance costs, equipment lifetime, and discount rates.

DOE's LCC and PBP analyses provided five outputs for each TSL that are reported in Table V–4 through Table V–6 for Class A equipment. The first three outputs are the percentages of standard-compliant machine purchases that would result in (1) A net LCC increase, (2) no impact, or (3) a net LCC savings for the customer. DOE used the estimated distribution of shipments by efficiency level for each equipment class to determine the affected customers. The fourth output is the average net LCC savings from standard-compliant equipment. The fifth output is the average PBP for the customer investment in standard-compliant equipment. The PBP is the number of years it would take for the customer to recover, through energy savings, the increased costs of higher efficiency equipment compared to baseline efficiency equipment.

TABLE V–4—SUMMARY LCC AND PBP RESULTS FOR CLASS A–LARGE–IN

	Trial Standard Level						
	1	2	3	4	5	6	7
Equipment with Net LCC Increase %	0	0	0	0	0	7	100
Equipment with No Change in LCC %	90	0	0	0	0	0	0
Equipment with Net LCC Savings %	10	100	100	100	100	93	0
Mean LCC Savings $	91	145	204	246	272	271	(1,419)
Mean Payback Period *years*	2.1	2.9	3.2	3.3	3.5	3.9	74.0

Note: Numbers in parentheses indicate negative values.

TABLE V–5—SUMMARY LCC AND PBP RESULTS FOR CLASS A–MEDIUM–IN

	Trial Standard Level						
	1	2	3	4	5	6	7
Equipment with Net LCC Increase %	0	0	0	0	0	0	100
Equipment with No Change in LCC %)	90	0	0	0	0	0	0
Equipment with Net LCC Savings %	10	100	100	100	100	100	0
Mean LCC Savings $	175	223	258	327	339	331	(1,119)
Mean Payback Period *years*	2.0	1.9	2.8	3.0	3.3	3.7	59.2

Note: Numbers in parentheses indicate negative values.

TABLE V–6—SUMMARY LCC AND PBP RESULTS FOR CLASS A–SMALL–IN

	Trial standard level						
	1	2	3	4	5	6	7
Equipment with Net LCC Increase %	0	0	0	0	0	7	100
Equipment with No Change in LCC %	90	0	0	0	0	0	0
Equipment with Net LCC Savings %	10	100	100	100	100	93	0
Mean LCC Savings $	141	197	251	284	297	290	(1,090)
Mean Payback Period *years*	2.0	2.7	3.1	3.2	3.5	3.9	69.7

Note: Numbers in parentheses indicate negative values.

For the Class A equipment, there are positive net LCC savings on average through TSL 6. Only 10 percent of all equipment purchased is expected to achieve a net LCC savings at the first TSL level, since about 90 percent of the equipment on the market in 2012 is expected to meet that standard. LCC savings consistently peak at TSL 5, but for between 93 percent and 100 percent of purchasers, Class A equipment is projected to achieve LCC savings even at TSL 6. Simple average PBPs are projected to be less than 3 years for all Class A equipment through TSL 2. PBPs are less than 4 years through TSL 6.

DOE's LCC and PBP analyses provided the same five outputs for each TSL for Class B equipment. These outputs are reported in Table V–7 through Table V–9.

TABLE V–7—SUMMARY LCC AND PBP RESULTS FOR CLASS B–LARGE

	Trial standard level					
	1	2	3	4	5	6
Equipment with Net LCC Increase %	0	9	19	27	100	100
Equipment with No Change in LCC %	90	0	0	0	0	0
Equipment with Net LCC Savings %	10	91	81	73	0	0
Mean LCC Savings $	48	53	51	42	(515)	(2,352)
Mean Payback Period *years*	3.0	4.1	5.8	6.6	74.0	100.0

Note: Numbers in parentheses indicate negative values.

TABLE V–8—SUMMARY LCC AND PBP RESULTS FOR CLASS B—MEDIUM

	Trial standard level					
	1	2	3	4	5	6
Equipment with Net LCC Increase %	0	11	21	33	100	100
Equipment with No Change in LCC %	90	0	0	0	0	0
Equipment with Net LCC Savings %	10	89	79	67	0	0
Mean LCC Savings $	46	57	48	38	(528)	(2,170)

TABLE V–8—SUMMARY LCC AND PBP RESULTS FOR CLASS B—MEDIUM—Continued

	Trial standard level					
	1	2	3	4	5	6
Mean Payback Period *years*	3.1	4.1	6.1	6.9	76.9	100.0

Note: Numbers in parentheses indicate negative values.

TABLE V–9—SUMMARY LCC AND PBP RESULTS FOR CLASS B—SMALL

	Trial standard level					
	1	2	3	4	5	6
Equipment with Net LCC Increase %	1	39	39	47	100	100
Equipment with No Change in LCC %	90	0	0	0	0	0
Equipment with Net LCC Savings %	10	61	61	53	0	0
Mean LCC Savings $	39	26	26	13	(582)	(2,070)
Mean Payback Period *years*	3.5	7.5	7.5	9.1	86.9	100.0

Note: Numbers in parentheses indicate negative values.

For Class B equipment, there are positive net LCC savings on average through TSL 4. Only 10 percent of all equipment purchased is expected to achieve a net LCC savings at the first TSL level, since about 90 percent of the equipment on the market in 2012 is expected to meet that standard. LCC savings consistently peak at TSL 3, but for 53 percent to 74 percent of purchasers, Class B equipment is projected to achieve LCC savings at TSL 5. Simple average PBPs are projected to be about 3 years for large and medium size Class B equipment at TSL 1. PBPs are about 4 years for large and medium size Class B equipment through TSL 2.

b. Life-Cycle Cost Subgroup Analysis

Using the LCC spreadsheet model, DOE estimated the impact of the TSLs on the following customer subgroup: Manufacturing facilities that have purchased their own beverage vending machines. This is the largest component of the 5 percent of site owners who also own their own vending machines, and comprises about 2 percent of all beverage vending machines. About 95 percent are owned by bottlers and vendors. The manufacturing facilities subgroup was analyzed because, in addition to being the largest independent block of owners, it had among the highest financing costs (based on weighted average cost of capital) and faced the lowest energy costs of any customer group. The group was therefore expected to have the least LCC savings and longest PBP of any identifiable customer group.

DOE estimated the LCC and PBP for the manufacturing facilities subgroup. Table V–10 shows the mean LCC savings for equipment that meets the proposed energy conservation standards for the manufacturing facilities subgroup, and Table V–11 shows the mean PBP (in years) for this subgroup. More detailed discussion on the LCC subgroup analysis and results can be found in chapter 12 of the TSD.

TABLE V–10—MEAN LIFE-CYCLE COST SAVINGS FOR REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT PURCHASED BY THE MANUFACTURING FACILITIES LCC SUBGROUP (2008$)

Equipment Class	Size	TSL 1	TSL 2	TSL 3	TSL 4	TSL5	TSL6	TSL 7
A	S	$94	$123	$150	$166	$168	$153	−$1,210
A	M	118	152	160	197	197	181	−1,256
A	L	60	89	121	144	153	142	−1,537
B	S	22	−6	−6	−19	−623	−2,072	NA
B	M	27	28	9	−2	−579	−2,183	NA
B	L	29	27	13	2	−567	−2,361	NA

TABLE V–11 MEAN PAYBACK PERIOD FOR REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT PURCHASED BY THE MANUFACTURING FACILITIES LCC SUBGROUP (YEARS)

Equipment Class	Size	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
A	S	2.4	3.4	3.8	4.0	4.3	4.8	81.0
A	M	2.4	2.3	3.5	3.7	4.1	4.6	74.1
A	L	2.6	3.5	3.9	4.1	4.4	4.9	84.2
B	S	4.4	10.0	10.0	12.4	95.8	100.0	NA
B	M	3.9	5.2	7.9	9.1	88.7	100.0	NA
B	L	3.7	5.1	7.4	8.6	86.1	100.0	NA

For beverage vending machines, the LCC and PBP impacts for manufacturing facilities that own their own beverage vending machines are less than those of all customers. Because they face lower energy costs, the lower value of energy savings lengthens the period over which the original investment is paid back and also reduces operating cost savings over

the lifetime of more efficient beverage vending machines. In addition, because they face higher financing costs, these sites have a relatively high opportunity cost for investment, so the value of future electricity savings from higher efficiency equipment is further reduced. Even so, for this subgroup of Class A machines, LCC is still positive for all but the TSL 8 level. PBP is lengthened by about a year, but is still less than 4 years at TSL 1 and less than 5 years at TSL.

2. Economic Impacts on Manufacturers

To assess the lower end of the range of potential impacts for the beverage vending machine industry, DOE considered the preservation-of-gross-margin-percentage scenario. This scenario represents the lower end of the range of industry profitability because it assumes that manufacturers are able to pass through increased production costs to their customers. However, manufacturers indicated during interviews that market conditions usually do not allow them to fully pass costs to their customers.

To assess the higher end of the range of potential impacts for the beverage vending machine industry, DOE considered the preservation-of-operating-profit scenario. The preservation-of-operating-profit scenario models manufacturer concerns about the overcapacity of the industry and the inability to set the prices they charge their customers. In this scenario, manufacturers spend the necessary investments required to convert their facilities to produce standards-compliant equipment. Despite this effort, operating profit does not change in absolute dollars and decreases as a percentage of revenue.

a. Class A Beverage Vending Machine Equipment

Table V–12 and Table V–13 show the MIA results for each TSL using both scenarios described above for Class A beverage vending machines.

TABLE V–12—MANUFACTURER IMPACT ANALYSIS FOR CLASS A BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

Preservation of Gross Margin Percentage Markup Scenario

Metric	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	2008$ millions	35.3	35.3	35.1	33.4	33.2	26.5	22.9	26.8
Change in INPV	2008$ millions		0.0	(0.2)	(1.9)	(2.1)	(8.8)	(12.4)	(8.3)
	%		0.08	−0.65	−5.47	−5.86	−24.95	−35.09	−23.67
Equipment Conversion Costs.	2008$ millions		0.0	0.6	0.6	1.2	2.9	3.5	3.5
Capital Conversion Costs	2008$ millions		0.0	0.0	2.2	2.2	9.1	13.0	14.1
Total Investment Required	2008$ millions		0.0	0.6	2.8	3.4	11.9	16.4	17.6

Note: Numbers in parentheses indicate negative values.

TABLE V–13—MANUFACTURER IMPACT ANALYSIS FOR CLASS A BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

Preservation of Gross Margin Percentage Markup Scenario

Metric	Units	Base case	Trial Standard Level						
			1	2	3	4	5	6	7
INPV	2008$ millions	35.3	35.3	34.9	32.7	32.2	25.4	21.6	14.1
Change in INPV	2008$ millions		(0.0)	(0.4)	(2.6)	(3.1)	(9.9)	(13.7)	(20.9)
	%		−0.04	−1.04	−7.45	−8.83	−28.14	−38.89	−59.74
Equipment Conversion Costs.	2008$ millions		0.0	0.6	0.6	1.2	2.9	3.5	3.5
Capital Conversion Costs	2008$ millions		0.0	0.0	2.2	2.2	9.1	13.0	14.1
Total Investment Required	2008$ millions		0.0	0.6	2.8	3.4	11.9	16.4	17.6

Note: Numbers in parentheses indicate negative values.

DOE estimates that there are no significant impacts on INPV for Class A equipment to meet TSL 1. The vast majority of equipment for sale today meets TSL 1. Therefore, DOE expects there will be no equipment or capital conversion costs and that industry revenue and production costs will not be significantly negatively affected.

At TSL 2, DOE estimated the impacts in INPV for Class A equipment to range from approximately −$0.2 million to −$0.4 million, a change in INPV of −0.65 percent to −1.04 percent. At this level, the industry cash flow decreases by approximately 6.5 percent, to $2.12 million, compared to the base case value of $2.27 million in the year leading up to the standards. At TSL 2, manufacturers will have to make some component switches to comply with the standard. However, most manufacturers will not have to make significant alterations to their production process and will only require minimal conversion costs. Though standards will increase the manufacturing production costs, the incremental cost is not substantially larger than most equipment sold today, resulting in minimal impacts on industry value.

At TSL 3, DOE estimated the impacts on INPV for Class A equipment to range from approximately −$1.9 million to −$2.6 million, a change in INPV of −5.47 percent to −7.45 percent. At this level, the industry cash flow decreases by approximately 46 percent, to $1.23 million, compared to the base case value of $2.27 million in the year leading up to the standards. At TSL 3, manufacturers will have to make additional component switches and minor changes to their production lines, resulting in minimal equipment and capital conversion costs. Standards increase production costs, but these

additional costs are not enough to severely affect INPV even if the dollar value of operating profit remains unchanged.

At TSL 4, DOE estimated the impacts on INPV for Class A equipment to range from −$2.1 million to −$3.1 million, a change in INPV of approximately −5.86 percent to −8.83 percent. At this level, the industry cash flow decreases by approximately 52.4 percent to $1.08 million, compared to the base case value of $2.27 million in the year leading up to the standards. At TSL 4, certain manufacturers have to make major changes to their production lines, while others will only have to make minor component changes to their existing production lines to comply with the standard. As a result, DOE believes TSL 4 may have differential impacts among manufacturers. The most significant change that must be implemented at this TSL is replacing fluorescent lighting with LEDs. If profitability remains at pre-standard then the impacts on INPV are worse.

At TSL 5, DOE estimated the impacts on INPV for Class A equipment to range from −$8.8 million to −$9.9 million, a change in INPV of approximately −24.95 percent to −28.14 percent. At this level, the industry cash flow decreases by approximately 191.9 percent to −$2.09 million, compared to the base case value of $2.27 million in the year leading up to the standards. At TSL 5, certain manufacturers have to completely redesign all their existing equipment, while others only have to make costly changes to their existing production lines to comply with the standard. Therefore, DOE believes TSL 5 has differential impacts among manufacturers. Depending on the pathway to meet TSL 5, manufacturers may have to alter their existing equipment cabinet designs, which would greatly increase conversion costs. These costly equipment and capital conversion costs are the most significant driver of INPV. In addition, the higher manufacturing costs of standards-compliant equipment could reduce profitability.

At TSL 6, DOE estimated the impacts on INPV for Class A equipment to range from −$12.4 million to −$13.7 million, a change in INPV of approximately −35.09 percent to −38.89 percent. DOE seeks comment on the magnitude of this estimated decline in INPV. Also, at TSL 6, the industry cash flow decreases by approximately 267.0 percent to −$3.79 million, compared to the base case value of $2.27 million in the year leading up to the standards. In addition, manufacturers have to redesign all their existing equipment and make capital investments in their production lines to comply with the standard. Manufacturers will have to make additional alterations to the existing equipment cabinet designs. In addition, the equipment changes necessary to meet TSL 6 are more complex, which increases the engineering and capital resources that must be employed. The production costs of equipment that meets TSL 6 are higher than at TSL 5. The cost to manufacture standards-compliant equipment could have a greater impact on profitability if the dollar value of operating profit remains unchanged. However, at TSL 5, the costly equipment and capital conversion costs are a more significant driver of INPV because the revenues from the higher incremental prices do not offset the greater conversion expenditures even if operating profit increases under standards. At TSL 6, DOE believes there are no differential impacts among manufacturers.

At TSL 7 (max-tech), DOE estimated the impacts on INPV for Class A to range from −$8.3 million to −$20.9 million, a change in INPV of approximately −23.67 percent to −59.74 percent. At this level, the industry cash flow decreases by approximately 287.9 percent to −$4.27 million, compared to the base case value of $2.27 million in the year leading up to the standards. Similar to TSL 6, TSL 7 involves additional and more complex changes to equipment cabinet designs. These additional changes increase equipment and capital conversion costs. However, the substantial increases in production costs to manufacture standard-compliant equipment is also a significant driver of INPV. If profitability does not increase with the substantially higher manufacturing costs, then the impact on INPV is much larger.

b. Class B Beverage Vending Machine Equipment

Table V–14 and Table V–15 show the MIA results for Class B beverage vending machines at each TSL using the preservation-of-gross-margin-percentage and preservation-of-operating-profit scenarios described above.

TABLE V–14—MANUFACTURER IMPACT ANALYSIS FOR CLASS B BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

Preservation of gross margin percentage markup scenario								
	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	2008$ millions	22.1	22.1	22.1	21.3	20.9	12.4	11.0
Change in INPV	2008$ millions		0.0	0.0	(0.8)	(1.3)	(9.7)	(11.2)
	%		0.04	0.07	−3.71	−5.71	−44.01	−50.38
Equipment Conversion Costs	2008$ millions		0.0	0.0	1.7	2.6	3.5	6.9
Capital Conversion Costs	2008$ millions		0.0	0.0	0.0	0.0	11.0	14.7
Total Investment Required	2008$ millions		0.0	0.0	1.7	2.6	14.5	21.6

Note: Numbers in parentheses indicate negative values.

TABLE V–15—MANUFACTURER IMPACT ANALYSIS FOR CLASS B BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

Preservation of gross margin percentage markup scenario								
	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	2008$ millions	22.1	22.1	22.1	21.2	20.8	8.8	(1.3)

TABLE V–15—MANUFACTURER IMPACT ANALYSIS FOR CLASS B BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO—Continued

Preservation of gross margin percentage markup scenario								
	Units	Base case	Trial standard level					
			1	2	3	4	5	6
Change in INPV	2008$ millions		(0.0)	(0.0)	(0.9)	(1.3)	(13.4)	(23.4)
	%		−0.05	−0.10	−4.17	−6.07	−60.33	−105.79
Equipment Conversion Costs	2008$ millions		0.0	0.0	1.7	2.6	3.5	6.9
Capital Conversion Costs	2008$ millions		0.0	0.0	0.0	0.0	11.0	14.7
Total Investment Required	2008$ millions		0.0	0.0	1.7	2.6	14.5	21.6

Note: Numbers in parentheses indicate negative values.

DOE estimates that there are no significant impacts on INPV for Class B equipment at TSL 1 or TSL 2. The vast majority of equipment for sale today meets these TSLs. Therefore, DOE expects there will be no equipment or capital conversion costs and that industry revenues and production costs will not be significantly negatively affected at TSL 1 or TSL 2.

At TSL 3, DOE estimated the impacts in INPV for Class B equipment to range from approximately −$0.8 million to −$0.9 million, a change in INPV of −3.71 percent to −4.17 percent. At this level, the industry cash flow decreases by approximately 30.9 percent, to $.98 million, compared to the base case value of $1.42 million in the year leading up to the standards. At TSL 3, manufacturers will have to make some component switches to comply with the standard. However, most manufacturers will not have to significantly alter their production process. In addition, these minor design changes will not raise the production costs beyond the cost of most equipment sold today, resulting in minimal impacts on industry value.

At TSL 4, DOE estimated the impacts on INPV for Class B equipment to range from −$1.3 million to −$1.3 million, a change in INPV of approximately −5.71 percent to −6.07 percent. At this level, the industry cash flow decreases by approximately 46.3 percent to $.76 million, compared to the base case value of $1.42 million in the year leading up to the standards. At TSL 4, manufacturers will have to make additional component switches, resulting in minimal equipment conversion costs. Standards increase production costs, but the cost increases are not enough to severely affect INPV if profitability remains the same as it was before standards.

At TSL 5, DOE estimated the impacts on INPV for Class B equipment to range from −$9.7 million to −$13.4 million, a change in INPV of approximately −44.01 percent to −60.33 percent. At this level, the industry cash flow decreases by approximately 371.9 percent to −$3.87 million, compared to the base case value of $1.42 million in the year leading up to the standards. At TSL 5, manufacturers have to redesign all their existing equipment and make capital investments in their production lines to comply with the standard. In addition, the equipment designs necessary to meet TSL 5 are more complex, which increases the engineering and capital resources that must be employed. Finally, the production costs of equipment that meets TSL 5 are higher. The cost to manufacture standards-compliant equipment could have a greater impact on the industry if operating profit does not increase with production costs.

At TSL 6 (max-tech), DOE estimated the impacts on INPV for Class B to range from −$11.2 million to −$23.4 million, a change in INPV of approximately −50.38 percent to −105.79 percent. At this level, the industry cash flow decreases by approximately 549.7 percent to −$6.40 million, compared to the base case value of $1.42 million in the year leading up to the standards. Similar to TSL 5, TSL 6 involves more complex changes to existing cabinet designs. These additional changes increase the equipment and capital conversion costs. However, the substantial increase in cost of manufacturer standards-compliant equipment at this TSL is also a significant driver of INPV. If profitability does not increase with the substantially higher manufacturing costs, then the impact on INPV is much larger.

c. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden.

DOE recognizes that each regulation can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can quickly reduce manufacturers' profits and possibly cause manufacturers to exit from the market. However, DOE could not identify any other DOE regulations that would affect the manufacturers of beverage vending machines or their parent companies. DOE requested information about the cumulative regulatory burden during manufacturer interviews. In general, manufacturers were not greatly concerned about other Federal, State, or international regulations. The requirements of their major customers have a greater impact on their business than any of these other regulations. For further information about the cumulative regulatory burden impacts, see chapter 13 of the TSD.

d. Impacts on Employment

DOE used the GRIM to assess the impacts of energy conservation standards on beverage vending machine industry employment. DOE used statistical data from the U.S. Census Bureau's 2006 Annual Survey of Manufacturers, the results of the engineering analysis, and interviews with manufacturers to estimate the inputs necessary to calculate industry-wide labor expenditures and employment levels.[37]

The vast majority of beverage vending machines are manufactured in the United States. Based on results of the GRIM, DOE expects that there would be slightly positive direct employment impacts among domestic beverage vending machine manufacturers for TSL 1 through TSL 6 for Class A equipment and TSL 1 through TSL 5 for Class B equipment. The GRIM estimates that employment would increase by fewer than 20 employees for Class A

[37] Results of the U.S. Census Bureau's 2007 Annual Survey of Manufacturers are not yet available.

equipment at TSL 1 through TSL 6 and fewer than 42 employees for Class B equipment at TSL 1 though TSL 5. The employment impacts at the max-tech levels for both equipment classes are positive. The employment impacts are more positive at the max-tech levels because more labor is required and the production costs of the most efficient equipment greatly increase. The employment impacts calculated in the GRIM are shown in Table V–29 and Table V–30 in section V.C.

The results calculated in the GRIM do not account for the possible relocation of domestic jobs to lower-labor-cost countries, which may occur independently of new standards or may be influenced by the level of investments new standards require. Manufacturers stated that although there are no current plans to relocate production facilities, higher TSLs would increase pressure to cut costs, which could result in relocation. In addition, standards could increase pressure to consolidate within the industry due to the low profitability and existing excess capacity. DOE requests comment on whether or not the proposed standard risks industry consolidation. Because the labor impacts in the GRIM do not take relocation or consolidation into account, the labor impacts would be different if manufacturers chose to relocate to lower cost countries or if manufacturers consolidated. Chapter 13 of the TSD further discusses how the employment impacts are calculated and shows the projected changes in employment levels by TSL.

The conclusions in this section are independent of any conclusions regarding employment impacts from the broader U.S. economy estimated in the employment impact analysis. Those impacts are documented in chapter 15 of the accompanying TSD.

e. Impacts on Manufacturing Capacity

According to the majority of beverage vending machine manufacturers, new energy conservation standards will not affect manufacturers' production capacity. Within the last decade, annual shipments of beverage vending machines have decreased almost three-fold. Due to the decline in shipments, it is likely that any of the major manufacturers has the capacity to meet most of the recent market demand. Consequently, the industry has the capacity to make many times more units than are currently sold each year. Thus, DOE believes manufacturers will be able to maintain manufacturing capacity levels and continue to meet market demand under new energy conservation standards.

f. Impacts on Subgroups of Manufacturers

As discussed above, using average cost assumptions to develop an industry cash-flow estimate is not adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure that differs largely from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics.

DOE evaluated the impact of new energy conservation standards on small manufacturers as defined by the SBA. During DOE's interviews, small business manufacturers suggested that the impacts of standards would not differ from impacts on larger companies. For a discussion of the impacts on small manufacturers, see chapter 13 of the TSD.

3. National Impact Analysis

a. Amount and Significance of Energy Savings

Because the pattern and strategies for improving the energy performance of beverage vending machines is somewhat different between Class A and Class B equipment, energy savings are reported separately for each class of equipment by TSL. The national energy savings were between 0.001 and 0.107 quads, depending on the TSL and equipment class, an amount of energy savings that DOE considers significant. There is clear and convincing evidence that each TSL that is more stringent than the baseline efficiency level would result in significantly more energy savings, ranging from 0.001 quads to 0.107 quads beyond that achieved in ENERGY STAR Tier 1 equipment.

To estimate the energy savings through 2042 due to new energy conservation standards, DOE compared the energy consumption of beverage vending machines under the base case to energy consumption under a new standard. The energy consumption calculated in the NIA is source energy, taking into account energy losses in the generation and transmission of electricity as discussed in section IV.J.

DOE tentatively determined the amount of energy savings at each of the seven TSLs being considered for Class A equipment and six TSLs for Class B equipment, then analyzed and aggregated the results across the three sizes for each equipment class.

Table V–16 shows the forecasted aggregate national energy savings of Class A equipment at each TSL. The table also shows the magnitude of the estimated energy savings if the savings are discounted at the 7-percent and 3-percent real discount rates. Each TSL considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards (chapter 11 of the TSD). DOE reports both undiscounted and discounted values of energy savings. Each TSL analyzed results in additional energy savings, ranging from an estimated 0.004 quads to 0.107 quads for TSLs 1 through 7 (undiscounted).

TABLE V–16—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR CLASS A EQUIPMENT

(Energy Savings for Units Sold from 2012 to 2042)

	Primary National Energy Savings (quads)		
Trial standard level	Undiscounted	3% Discounted	7% Discounted
1	0.004	0.002	0.001
2	0.019	0.011	0.006
3	0.043	0.025	0.013
4	0.068	0.038	0.020
5	0.080	0.045	0.024
6	0.088	0.050	0.026
7	0.107	0.060	0.031

In Table V–17, DOE reports both undiscounted and discounted values of energy savings for Class B equipment. Each higher TSL analyzed results in additional energy savings, ranging from an estimated 0.001 quads to 0.035 quads for TSLs 1 through 6 (undiscounted).

TABLE V–17—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR CLASS B EQUIPMENT

(Energy Savings for Units Sold from 2012 to 2042)

Trial standard level	Primary National Energy Savings (quads)		
	Undiscounted	3% Discounted	7% Discounted
1	0.001	0.001	0.000
2	0.002	0.001	0.001
3	0.010	0.006	0.003
4	0.012	0.007	0.003
5	0.031	0.018	0.009
6	0.035	0.020	0.010

b. Net Present Value

The NPV analysis is a measure of the cumulative benefit or cost of standards to the Nation. In accordance with the Office of Management and Budget's (OMB) guidelines on regulatory analysis (OMB Circular A–4, section E, September 17, 2003), DOE calculated an estimated NPV using both a 7-percent and 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. This rate reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return to capital to be near this rate. In addition, DOE used the 3-percent discount rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for equipment and purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term Government debt (*e.g.,* the yield on Treasury notes minus the annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table V–18 shows the estimated cumulative NPV for beverage vending machines resulting from the sum of the NPV calculated for the Class A equipment class. Table V–19 assumes the *AEO2009* reference case forecast for electricity prices. At a 7-percent discount rate, TSLs 1 through 6 show positive cumulative NPVs. The highest NPV is provided by TSL 5 at $0.108 billion. TSL 6 provided $0.105 billion. TSL 7 showed an NPV at −$0.719 billion, the result of negative NPV observed in all sizes of this equipment class.

TABLE V–18—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR CLASS A EQUIPMENT (*AEO2009* REFERENCE CASE)

Trial standard level	NPV* *billion 2008$*	
	7% Discount rate	3% Discount rate
1	0.009	0.020
2	0.038	0.084
3	0.062	0.149
4	0.098	0.235
5	0.108	0.263
6	0.105	0.265
7	(0.719)	(1.210)

Note: Numbers in parentheses indicate negative NPV (*i.e.,* net cost).

At a 3-percent discount rate, all but TSL 7 showed a positive NPV, with the highest NPV provided at TSL 6 (*i.e.,* $0.265 billion). TSL 5 provided a near equivalent NPV at $0.263 billion. TSL 7 provided an NPV of −$1.210 billion. DOE estimates that all Class A equipment at TSL 7 has negative NPVs at a 3-percent discount rate.

Table V–19 shows the estimated cumulative NPV for beverage vending machines resulting from the sum of the NPV calculated for Class B equipment. This table assumes the *AEO2009* reference case forecast for electricity prices. At a 7-percent discount rate, TSLs 1 through 4 show positive cumulative NPVs. The highest NPV is provided by TSL 2 at $0.003 billion. TSL 3 provided zero NPV. TSL 5 and TSL 6 show a negative NPV. TSL 5 has a −$0.256 billion NPV, the result of negative NPV observed in all sizes of Class B equipment.

TABLE V–19—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR CLASS B EQUIPMENT (*AEO2009* REFERENCE CASE)

Trial standard level	NPV *billion 2008$*	
	7% Discount rate	3% Discount rate
1	0.002	0.005
2	0.003	0.007
3	0.000	0.008
4	(0.004)	0.001
5	(0.256)	(0.442)
6	(1.013)	(1.822)

Note: Numbers in parentheses indicate negative NPV (*i.e.,* net cost).

At a 3-percent discount rate, TSLs 1 through 4 showed a positive NPV, with the highest NPV provided at TSL 3 ($0.008 billion). TSL 2 provided a near equivalent NPV at $0.007 billion. TSL 5 provided an NPV of −$0.442 billion. DOE estimated that all Class B equipment sizes at TSL 5 have negative NPVs at a 3-percent discount rate.

In addition to the reference case, DOE examined the NPV under the *AEO2009* high-growth and low-growth electricity price forecasts. The results of this examination can be found in chapter 11 of the TSD.

c. Impacts on Employment

Besides the direct impacts on manufacturing employment discussed in section V.B.2.d, DOE develops general estimates of the indirect employment impacts of proposed standards on the economy. As discussed above, DOE expects energy conservation standards for beverage vending machines to reduce energy bills for commercial customers, and the resulting net savings to be redirected to other forms of economic activity. DOE also realizes that these shifts in spending and economic activity by vending machine operators and site owners could affect the demand for labor. The impact comes in a variety of businesses not directly involved in the decision to make, operate, or pay the utility bills for beverage vending machines. The economic impact is ''indirect.'' To estimate these indirect economic effects, DOE used an input/output model of the U.S. economy using U.S. Department of Commerce, Bureau of Economic Analysis (BEA) and Bureau of Labor Statistics (BLS) data (as described in section IV.K; see chapter 15 of the TSD for details).

In this input/output model, the spending of the money saved on utility bills when more efficient vending machines are deployed is centered in economic sectors that create more jobs than are lost in electric utilities when spending is shifted from electricity to other products and services. Thus, the proposed beverage vending machine energy conservation standards are likely to slightly increase the net demand for labor in the economy. However, the net increase in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Neither the BLS data nor the input/output model used by DOE includes the quality of jobs. As shown in Table V–20 and Table V–21, DOE estimates that net indirect employment impacts from a proposed beverage vending machine standard are likely to be very small.

TABLE V–20—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT FROM CLASS A EQUIPMENT: JOBS IN 2012 TO 2042

Trial standard level	Net national change in jobs			
	2012	2022	2032	2042
1	0	10	13	14
2	3	50	57	64
3	5	113	132	146
4	9	173	203	226
5	9	204	239	265
6	9	223	262	292
7	(61)	220	267	304

TABLE V–21—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT FROM CLASS B EQUIPMENT: JOBS IN 2012 TO 2042

Trial standard level	Net national change in jobs			
	2012	2022	2032	2042
1	0	3	4	4
2	0	5	5	6
3	0	24	29	33
4	0	28	34	38
5	(19)	66	80	90
6	(78)	39	56	68
7	NA	NA	NA	NA

Note: Numbers in parentheses indicate negative values.

4. Impact on Utility or Performance of Equipment

In performing the engineering analysis, DOE considers design options that would not lessen the utility or performance of the individual classes of equipment (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6316(e)(1)). As presented in the screening analysis (chapter 4 of the TSD), DOE eliminates design options that reduce the utility of the equipment from consideration. For this notice, DOE tentatively concluded that none of the efficiency levels proposed for beverage vending machines reduce the utility or performance of the equipment.

5. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition likely to result from standards. It directs the Attorney General to determine in writing the impact, if any, of any lessening of competition likely to result from a proposed standard (42 U.S.C. 6295(o)(2)(B)(i)(V) and 6316(e)(1)). To assist the Attorney General in making such a determination, DOE provided the Department of Justice (DOJ) with copies of this notice and the TSD for review. During MIA interviews, domestic manufacturers indicated that foreign manufacturers have not entered the beverage vending machine market for the past several years. Manufacturers also stated that little or no consolidation has occurred among beverage vending machine manufacturers in recent years. Manufacturers indicated that the competitive nature of the industry has created pressure to consolidate, but that new energy conservation standards should not put any one manufacturer at a competitive disadvantage. Manufacturers have also stated that there has been some consolidation among bottlers in the industry. DOE believes that these trends will continue in this market regardless of the proposed standard levels chosen.

DOE does not believe that standards would result in domestic firms moving their production facilities outside the United States. The vast majority of beverage vending machines are manufactured in the United States and, during interviews, manufacturers in general indicated they would modify their existing facilities to comply with energy conservation standards.

6. Need of the Nation To Conserve Energy

Improving the energy efficiency of beverage vending machines, 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 beverage vending machines would also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. Table V–22 provides DOE's estimate of cumulative CO_2, NO_x, and Hg emissions reductions that would result from the TSLs considered in this rulemaking for both Class A and Class B equipment. The expected energy savings from the proposed standards for beverage vending machines may also reduce the cost of maintaining nationwide emissions standards and constraints. In the draft EA (found in 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 V–22—CUMULATIVE CO_2 AND OTHER EMISSIONS REDUCTIONS (CUMULATIVE REDUCTIONS FOR PRODUCTS SOLD FROM 2012 TO 2042)

	Trial standard levels for Class A						
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Emissions Reductions							
CO_2 (Mt)	0.23	1.01	2.27	3.56	4.19	4.61	5.59
NO_x (kt)	0.03	0.14	0.31	0.48	0.57	0.62	0.75
Hg (tons)							
Low	0	0	0	0	0	0	0
High	0.004	0.017	0.038	0.059	0.069	0.076	0.093

	Trial standard levels for Class B					
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Emissions Reductions						
CO_2 (Mt)	0.07	0.11	0.53	0.61	1.64	1.83
NO_x (kt)	0.01	0.01	0.07	0.08	0.22	0.25
Hg (tons)						
Low	0	0	0	0	0	0
High	0.001	0.002	0.009	0.010	0.027	0.030

Mt = million metric tons
kt = thousand tons
Note: Negative values indicate emission increases. Detail may not sum to total due to rounding.

As noted in section IV.L, 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 U.S. SO_2 emissions due to emissions caps.

NO_x emissions are currently subject to emissions caps under the Clean Air Interstate Rule (CAIR) published in the **Federal Register** on May 12, 2005. 70 FR 25162 (May 12, 2005). The CAIR caps emissions in 28 eastern States and

the District of Columbia (DC) (collectively ''States''). As with the SO_2 emissions cap, energy conservation standards are not likely to have a physical effect on NO_x emissions in those States. However, the standards proposed in today's NOPR might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits if they were large enough. DOE believes that such standards would not produce such an impact because the estimated reduction in NO_x emissions or the corresponding increase in available allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_x.

In contrast, new or amended energy conservation standards would reduce NO_x emissions in those 22 States that are not affected by the CAIR, and these emissions could be estimated from NEMS–BT. As a result, DOE used the NEMS–BT to forecast emission reductions from the beverage machine standards that are considered in today's NOPR.

Though currently in effect, CAIR has been the subject of significant litigation. CAIR was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in its July 11, 2008, decision in *North Carolina* v. *Environmental Protection Agency.*[38] However, on December 23, 2008, the D.C. Circuit decided to allow the CAIR to remain in effect until it is replaced by a rule consistent with the court's earlier opinion.[39]

DOE established a range of Hg emission 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 to 0.02 percent of the national base-case emissions forecast by NEMS–BT, depending on the TSL.

DOE has considered the possible monetary value of the benefits likely to result from the 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 decision makers 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.

DOE previously proposed using 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). DOE derived the IPCC 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 expects that 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 Department of Energy, together with other Federal agencies, is 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 the proposed 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.[40]

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

[38] 531 F.3d 896 (D.C. Cir. 2008).

[39] *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008) (remand of vacatur).

[40] ''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).

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 NOPR, DOE used the range of values 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$, 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's 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 concludes 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. DOE assumes that it is 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 global values.

Table V–23 and Table V–24 present the resulting estimates of the potential range of NPV benefits associated with reducing CO_2 emissions for both Class A and Class B equipment based on the range of values used by DOE for this proposed rule.

TABLE V–23—ESTIMATES OF SAVINGS FROM CO_2 EMISSIONS REDUCTIONS AT ALL TSLS AT A SEVEN-PERCENT DISCOUNT RATE AND THREE-PERCENT DISCOUNT RATE FOR CLASS A EQUIPMENT

TSL	Estimated cumulative CO_2 emission reductions *Mt*	Value of estimated CO_2 emission reductions at 7% discount rate *million 2007$*	Value of estimated CO_2 emission reductions at 3% discount rate *million 2007$*
1	0.23	0–2.2	0–4.3
2	1.01	0–9.7	0–18.9
3	2.27	0–21.9	0–42.5
4	3.56	0–34.3	0–66.6
5	4.19	0–40.4	0–78.5
6	4.61	0–44.5	0–86.4
7	5.59	0–53.9	0–104.7

TABLE V–24—ESTIMATES OF SAVINGS FROM CO_2 EMISSIONS REDUCTIONS AT ALL TSLS AT A SEVEN-PERCENT DISCOUNT RATE AND THREE-PERCENT DISCOUNT RATE FOR CLASS B EQUIPMENT

TSL	Estimated cumulative CO_2 emission reductions *Mt*	Value of estimated CO_2 emission reductions at 7% discount rate *million 2007$*	Value of estimated CO_2 emission reductions at 3% discount rate *million 2007$*
1	0.07	0–0.7	0–1.3
2	0.11	0–1.0	0–2
3	0.53	0–5.1	0–10
4	0.61	0–5.9	0–11.4
5	1.64	0–15.8	0–30.8
6	1.83	0–17.6	0–34.2

The Department is well aware that scientific and economic knowledge about the contribution of CO_2 and other greenhouse gas emissions (GHG) to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to likely change. DOE recognizes the importance of continuing to monitor current research on the potential economic damages resulting from climate change, and of periodically updating estimates of the value of reducing CO_2 emissions to reflect continuing advances in scientific and economic knowledge about the nature and extent of climate change and the threat it poses to world economic development. Further, DOE recognizes the interest and expertise of other federal agencies, particularly the Environmental Protection Agency and the Department of Transportation, in the issue of valuing the reductions in climate damages that are likely to result from those agencies' own efforts to reduce GHG emissions. DOE will continue to work closely with those and other federal agencies in the development and review of the economic values of reducing GHG emissions.

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 the 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 D.C. 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 the CAIR. For the area of the United States not covered by the CAIR, DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR 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 $432 per ton to $4,441 per ton in 2007$).[41]

To estimate the monetary value of Hg emission reductions resulting from the TSLs considered for today's NOPR, DOE utilized a range of monetary values per ton of emissions and a range of physical emission reductions for Hg. Similar to SO_2 and NO_X, future emissions of Hg would have been subject to emissions caps under the Clean Air Mercury Rule (CAMR). The CAMR would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010, but was vacated by the D.C. Circuit in its February 8, 2008, decision in *New Jersey* v. *Environmental Protection Agency.*[42] DOE typically uses the NEMS–BT model to calculate emissions from the electrical generation sector; however, the 2008 NEMS–BT model is not suitable for assessing mercury emissions in the absence of a CAMR cap. Thus, DOE used a range of Hg emissions rates (in tons of Hg per energy per TWh produced) based on the *AEO2008.* Because the high end of the range of Hg emissions rates attributable to electricity generation are from coal-fired power plants, DOE based that emissions rate on the tons of mercury emitted per TWh of coal-generated electricity. DOE's low estimate assumed that future standards would displace electrical generation from natural gas powered power plants. The low end of the range of Hg emissions rates is zero because natural gas powered power plants have virtually no Hg emissions associated with their operations. To estimate the reduction in mercury emissions, DOE multiplied the emissions rates by the reduction in electricity generation associated with the standards proposed in today's NOPR.

DOE estimated the national monetized values per ton based on environmental damage estimates from the literature. DOE conducted research for today's NOPR 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 $32.6 million per ton emitted per year (2007$).[43] The low-end estimate is $0.66 million per ton emitted (in 2004$) or $0.739 million per ton in 2007$. 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] Tables V–25 through Table V–28 present the resulting estimates of the potential range of present value benefits associated with reducing national NO_X and Hg emissions for Class A and B equipment.

TABLE V–25—ESTIMATES OF SAVINGS FROM REDUCING NO_X AND HG EMISSIONS AT ALL TSLS AT A SEVEN-PERCENT DISCOUNT RATE FOR CLASS A EQUIPMENT

TSL	Estimated cumulative NO_X emission reductions *kt*	Value of estimated NO_X emission reductions *thousand 2007$*	Estimated cumulative Hg emission reductions *tons*	Value of estimated Hg emission reductions *thousand 2007$*
1	0.03	5–50	0–0.004	0–44
2	0.14	21–221	0–0.017	0–196
3	0.31	48–497	0–0.038	0–441
4	0.48	76–778	0–0.059	0–690
5	0.57	89–918	0–0.069	0–814
6	0.62	98–1010	0–0.076	0–896
7	0.75	119–1224	0–0.093	0–1086

[41] OMB, 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).

[42] *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008).

[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 V–26—ESTIMATES OF SAVINGS FROM REDUCING NO_X AND HG EMISSIONS AT ALL TSLS AT A SEVEN-PERCENT DISCOUNT RATE FOR CLASS B EQUIPMENT

TSL	Estimated cumulative NO_X emission reductions *kt*	Value of estimated NO_X emission reductions *thousand 2007$*	Estimated cumulative Hg emission reductions *tons*	Value of estimated Hg emission reductions *thousand 2007$*
1	0.01	2–16	0–0.001	0–14
2	0.01	2–23	0–0.002	0–21
3	0.07	11–116	0–0.009	0–103
4	0.08	13–133	0–0.010	0–118
5	0.22	35–359	0–0.027	0–319
6	0.25	39–400	0–0.030	0–355

TABLE V–27—ESTIMATES OF SAVINGS FROM REDUCING NO_X AND HG EMISSIONS AT ALL TSLS AT A THREE-PERCENT DISCOUNT RATE FOR CLASS A EQUIPMENT

TSL	Estimated cumulative NO_X emission reductions *kt*	Value of estimated NO_X emission reductions *thousand 2007$*	Estimated cumulative Hg emission reductions *tons*	Value of estimated Hg emission reductions *thousand 2007$*
1	0.03	8–85	0–0.004	0–76
2	0.14	37–377	0–0.017	0–338
3	0.31	83–849	0–0.038	0–761
4	0.48	129–1330	0–0.059	0–1192
5	0.57	153–1568	0–0.069	0–1405
6	0.62	168–1726	0–0.076	0–1547
7	0.75	203–2092	0–0.093	0–1874

TABLE V–28—ESTIMATES OF SAVINGS FROM REDUCING NO_X AND HG EMISSIONS AT ALL TSLS AT A THREE-PERCENT DISCOUNT RATE FOR CLASS B EQUIPMENT

TSL	Estimated cumulative NO_X emission reductions *kt*	Value of estimated NO_X emission reductions *thousand 2007$*	Estimated cumulative Hg emission reductions *tons*	Value of estimated Hg emission reductions *thousand 2007$*
1	0.01	3–27	0–0.001	0–24
2	0.01	4–40	0–0.002	0–36
3	0.07	19–199	0–0.009	0–178
4	0.08	22–227	0–0.010	0–204
5	0.22	60–614	0–0.027	0–550
6	0.25	67–684	0–0.030	0–613

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(e)(1)) DOE identified no factors other than those already considered above for analysis.

C. Proposed Standard

EPCA specifies that any new or amended energy conservation standard for any type (or class) of covered equipment shall 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) and 6316(e)(1)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1)) The new or amended standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(e)(1))

DOE developed trial standard levels independently for Class A and Class B beverage vending machines. DOE considered 7 TSLs for Class A and 6 TSLs for Class B. In selecting the proposed energy conservation standards for both classes of beverage vending machines for consideration in today's notice of proposed rulemaking, DOE started by examining the maximum technologically feasible levels, and determined whether those levels were economically justified. Upon finding the maximum technologically feasible levels not to be justified, DOE analyzed the next lower TSL to determine whether that level was economically justified. DOE repeated this procedure until it identified a TSL that was economically justified.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, Table V–29 and Table V–30 present summaries of quantitative analysis results for each TSL for Class A equipment and Class B equipment, respectively, based on the assumptions and methodology discussed above. These tables present the results or, in some cases, a range of results, for each TSL. The range of values reported in these tables for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

1. Class A Equipment

TABLE V–29—SUMMARY OF RESULTS FOR CLASS A EQUIPMENT BASED UPON THE *AEO2009* REFERENCE CASE ENERGY PRICE FORECAST*

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Primary Energy Saved *quads*	0.004	0.019	0.043	0.068	0.080	0.088	0.107
7% Discount Rate	0.001	0.006	0.013	0.020	0.024	0.026	0.031
3% Discount Rate	0.002	0.011	0.025	0.038	0.045	0.050	0.060
Generation Capacity Reduction *GW***	0.002	0.009	0.020	0.031	0.037	0.041	0.049
NPV *2008$ billion:*							
7% Discount Rate	0.009	0.038	0.062	0.098	0.108	0.105	(0.719)
3% Discount Rate	0.020	0.084	0.149	0.235	0.263	0.265	(1.210)
Industry Impacts:							
Industry NPV *2008$ million*	0	(0.2)–(0.4)	(1.9)–(2.6)	(2.1)–(3.1)	(8.8)–(9.9)	(12.4)–(13.7)	(8.3)–(20.9)
Industry NPV *% change*	0.1	(0.6)–(1.0)	(5.5)–(7.4)	(5.9)–(8.8)	(25.0)–(28.1)	(35.1)–(38.9)	(23.7)–(59.7)
Cumulative Emissions Impacts†:							
CO_2 Reductions *Mt*	0.23	1.01	2.27	3.56	4.19	4.61	5.59
Value of CO_2 Reductions at 7% Discount Rate *million 2007$*	0–2.2	0–9.7	0–21.9	0–34.3	0–40.4	0–44.5	0–53.9
Value of CO_2 Reductions at 3% Discount Rate *million 2007$*	0–4.3	0–18.9	0–42.5	0–66.6	0–78.5	0–86.4	0–104.7
NO_X Reductions *kt*	0.03	0.14	0.31	0.48	0.57	0.62	0.75
Value of NO_X Reductions at 7% Discount Rate *thousand 2007$*	5–50	21–221	48–497	76–778	89–918	98–1010	119–1224
Value of NO_X Reductions at 3% Discount Rate *thousand 2007$*	8–85	37–377	83–849	129–1330	153–1568	168–1726	203–2092
Hg Reductions *tons*	0–0.004	0–0.017	0–0.038	0–0.059	0–0.069	0–0.076	0–0.093
Value of Hg Reductions at 7% Discount Rate *thousand 2007$*	0–44	0–196	0–441	0–690	0–814	0–896	0–1086
Value of Hg Reductions at 3% Discount Rate *thousand 2007$*	0–76	0–338	0–761	0–1192	0–1405	0–1547	0–1874
Life-Cycle Cost:.							
Net Savings *%*	10	100	100	100	100	100	98
Net Increase *%*	0	0	0	0	0	2	100
No Change *%*	90	0	0	0	0	0	0
Mean LCC Savings *2008$*	154	204	245	307	322	316	(1,194)
Mean PBP *years*	2.0	2.1	2.9	3.1	3.4	3.8	62.9
Direct Domestic Employment Impacts (2012) *jobs*	0	2	8	12	15	19	133
Indirect Employment Impacts (2042) *jobs*	14	64	146	226	265	292	304

* Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Change in installed generation capacity by the year 2042 based on *AEO2009* Reference Case.
† CO_2 emissions impacts include physical reductions at power plants. NO_X emissions impacts include physical reductions at power plants as well as production of emissions allowance credits where NO_X emissions are subject to emissions caps.

First, DOE considered TSL 7, the most efficient level for Class A beverage vending machines. TSL 7 would save an estimated 0.107 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.031 quads. For the Nation as a whole, DOE projects that TSL 7 would result in a net decrease of $719 million in NPV, using a discount rate of 7 percent. The emissions reductions at TSL 7 are 5.59 Mt of CO_2, up to 0.75 kt of NO_X, and up to 0.093 tons of Hg. These reductions have a value of up to $53.9 million for CO_2, $1.2 million for NO_X, and $1.1 million for Hg, at a discount rate of 7 percent. DOE also estimates that at TSL 7, total electric generating capacity in 2042 will decrease compared to the base case by 0.049 GW.

At TSL 7, DOE projects that the average Class A beverage vending machine customer will experience an increase in LCC of $1,194 compared to the baseline. At TSL 7, DOE estimates the fraction of customers experiencing LCC increases will be 100 percent. The mean PBP for the average Class A beverage vending machine customer at TSL 7 compared to the baseline level is projected to be 62.9 years.

At higher TSLs, manufacturers have a more difficult time maintaining current operating profit levels with larger increases in manufacturing production costs, as standards increase recurring operating costs like capital expenditures, purchased materials, and carrying inventory. Therefore, it is more likely that the higher end of the range of impacts will be reached at TSL 7 (*i.e.,* a drop of 59.7 percent in INPV). Manufacturers expressed great concern about high capital and equipment conversion costs necessary to convert production into standards-compliant equipment. At TSL 7, there is the risk of very large negative impacts on the industry if manufacturers' operating profits levels are reduced. See section IV.I for additional manufacturer concerns.

After carefully considering the analysis and weighing the benefits and burdens of TSL 7, DOE finds that the benefits to the Nation of TSL 7 (*i.e.,* energy savings and emissions reductions (including environmental and monetary benefits)) do not outweigh the burdens (*i.e.,* a decrease of $719 million in NPV and a decrease of 59.7 percent in INPV). Because the burdens of TSL 7 outweigh the benefits, TSL 7 is not economically justified. Therefore, DOE proposes to reject TSL 7 for Class A equipment.

DOE then considered TSL 6, which provides for Class A equipment the maximum efficiency level that the analysis showed to have positive NPV to the Nation. TSL 6 would likely save an estimated 0.088 quads of energy through 2042, an amount DOE considers

significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.026 quads. For the Nation as a whole, DOE projects that TSL 6 would result in a net increase of $105 million in NPV, using a discount rate of 7 percent. The estimated emissions reductions at TSL 6 are 4.61 Mt of CO_2, up to 0.62 kt of NO_x, and up to 0.076 tons of Hg. These reductions have a value of up to $44.5 million for CO_2, $1.0 million for NO_x, and $896,000 for Hg, at a discount rate of 7 percent. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.041 GW under TSL 6.

At TSL 6, DOE projects that the average beverage vending machine customer will experience a reduction in LCC of $316 compared to the baseline. The mean PBP for the average beverage vending machine customer at TSL 6 is projected to be 3.8 years compared to the purchase of baseline equipment.

As is the case with TSL 7, DOE believes the majority of manufacturers would need to completely redesign all Class A equipment offered for sale. Therefore, DOE expects beverage vending machine manufacturers would have some difficulty maintaining current operating profit levels with higher production costs. Similar to TSL 7, it is more likely that the higher end of the range of impacts would be reached at TSL 6 (*i.e.,* a decrease of 38.9 percent in INPV). However, compared to the baseline, Class A equipment showed significant positive LCC savings on a national average basis and customers did not experience an increase in LCC with a standard at TSL 6 compared with purchasing baseline equipment. The PBP calculated for Class A equipment was lower than the life of the equipment.

After carefully considering the analysis and weighing the benefits and burdens of TSL 6, DOE proposes that for Class A equipment, TSL 6 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. TSL 6 is technologically feasible because the technologies required to achieve these levels are already in existence. TSL 6 is economically justified because the benefits to the Nation (*i.e.,* increased energy savings of 0.088 quads, emissions reductions including environmental and monetary benefits of, for example, 4.61 Mt of carbon dioxide emissions reduction with an associated value of up to $44.5 million at a discount rate of 7 percent, and an increase of $105 million in NPV) outweigh the costs (*i.e.,* a decrease of 38.9 percent in INPV). There is also the added benefit in terms of a reduction in total electrical generating capacity in 2042 compared to the base case of 0.041 GW under the TSL 6 scenario.

Therefore, DOE proposes TSL 6 as the energy conservation standard for Class A beverage vending machines in this NOPR. DOE seeks comment and further data or information on the magnitude of the estimated decline in INPV at TSL 6, and what impact this level could have on industry parties, including small businesses. DOE also requests comment on whether the energy savings and related benefits of TSL 6 outweigh the costs, including potential manufacturer impacts. DOE is particularly interested in receiving comments, views, and further data or information from interested parties concerning: (1) Why the private market has not been able to capture the energy benefits proposed in TSL 6; (2) whether and to what extent parties estimate they will be able to transfer costs of implementing TSL 6 on to consumers; (3) whether and to what extent parties estimate distributional chain intermediaries (such as wholesalers or bottlers) will be able to absorb TSL 6 implementation costs and in turn transfer these costs to on-site consumers, who ultimately benefit from the energy gains associated with the proposed standard.

2. Class B Equipment

TABLE V–30—SUMMARY OF RESULTS FOR CLASS B EQUIPMENT BASED ON THE AEO2009 REFERENCE CASE ENERGY PRICE FORECAST*

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Primary Energy Saved (quads)	0.001	0.002	0.010	0.012	0.031	0.035
7% Discount Rate	0.000	0.001	0.003	0.003	0.009	0.010
3% Discount Rate	0.001	0.001	0.006	0.007	0.018	0.020
Generation Capacity Reduction (GW)**	0.001	0.001	0.005	0.005	0.014	0.016
NPV (2008$ billion):						
7% Discount Rate	0.002	0.003	0.000	(0.004)	(0.256)	(1.013)
3% Discount Rate	0.005	0.007	0.008	0.001	(0.442)	(1.822)
Industry Impacts						
Industry NPV (2008$ million)	0	0	(0.8)–(0.9)	(1.3)–(1.3)	(9.7)–(13.4)	(11.2)–(23.4)
Industry NPV (% Change)	0–(0.1)	0.1–(0.1)	(3.7)–(4.2)	(5.7)–(6.1)	(44.0)–(60.3)	(50.4)–(105.8)
Cumulative Emissions Impacts†:						
CO_2 Reductions (Mt)	0.07	0.11	0.53	0.61	1.64	1.83
Value of CO_2 reductions at 7% discount rate (million 2007$)	0–0.7	0–1	0–5.1	0–5.9	0–15.8	0–17.6
Value of CO_2 reductions at 3% discount rate (million 2007$)	0–1.3	0–2	0–10	0–11.4	0–30.8	0–34.2
NO_X Reductions (kt)	0.01	0.01	0.07	0.08	0.22	0.25
Value of NO_X reductions at 7% discount rate (thousand 2007$)	2–16	2–23	11–116	13–133	35–359	39–400
Value of NO_X reductions at 3% discount rate (thousand 2007$)	3–27	4–40	19–199	22–227	60–614	67–684
Hg Reductions (t)	0–0.001	0–0.002	0–0.009	0–0.010	0–0.027	0–0.030
Value of Hg reductions at 7% discount rate (thousand 2007$)	0–14	0–21	0–103	0–118	0–319	0–355
Value of Hg reductions at 3% discount rate (thousand 2007$)	0–24	0–36	0–178	0–204	0–550	0–613
Life-Cycle Cost						
Net Savings (%)	10	100	90	80	69	0
Net Increase (%)	0	11	21	32	100	100
No Change (%)	90	0	0	0	0	0
Mean LCC Savings (2008$)	47	56	49	39	(525)	(2216)

TABLE V–30—SUMMARY OF RESULTS FOR CLASS B EQUIPMENT BASED ON THE AEO2009 REFERENCE CASE ENERGY PRICE FORECAST*—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Mean PBP (years)	3.1	4.1	6.0	6.9	76.2	100
Direct Domestic Employment Impacts (2012) (jobs)	0	0	3	4	41	134
Indirect Employment Impacts (2042) (jobs)	4	6	33	38	90	68

* Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Change in installed generation capacity by the year 2042 based on *AEO2008* Reference Case.
† CO_2 emissions impacts include physical reductions at power plants. NO_X emissions impacts include physical reductions at power plants as well as production of emissions allowance credits where NO_X emissions are subject to emissions caps.

First, DOE considered TSL 6, the most efficient level for Class B beverage vending machines. TSL 6 would likely save an estimated 0.035 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.01 quads. For the Nation as a whole, DOE projects that TSL 6 would result in a net decrease of $1.013 billion in NPV, using a discount rate of 7 percent. The emissions reductions at TSL 6 are 1.83 Mt of CO_2, up to 0.25 kt of NO_X, and up to 0.03 tons of Hg. These reductions have a value of up to $17.6 million for CO_2, $400,000 for NO_X, and $355,000 for Hg, at a discount rate of 7 percent. DOE also estimates that at TSL 6, total electric generating capacity in 2042 will decrease compared to the base case by 0.016 GW.

At TSL 6, DOE projects that for the average customer, the LCC of Class B beverage vending machines will increase by $2,216 compared to the baseline. At TSL 6, DOE estimates the fraction of customers experiencing LCC increases will be 100 percent. The mean PBP for the average Class B beverage vending machine customer at TSL 6 compared to the baseline level is projected to be 100 years.

At higher TSLs, manufacturers have a more difficult time maintaining operating profit with large increases in production costs. Therefore, it is more likely that the higher end of the range of impacts would be reached at TSL 6 (*i.e.,* a decrease of 105.8 percent in INPV). At TSL 6, there is the risk of very large negative impacts on the industry if manufacturers' operating profit levels are reduced.

After carefully considering the analysis and weighing the benefits and burdens of TSL 6, DOE finds that the benefits to the Nation of TSL 6 (*i.e.,* energy savings and emissions reductions including environmental and monetary benefits) do not outweigh the burdens (*i.e.,* a decrease of $1.013 billion in NPV, a decrease of 105.8 percent in INPV, and an economic burden on customers). Therefore, DOE proposes that the burdens of TSL 6 outweigh the benefits and TSL 6 is not economically justified. Therefore, DOE proposes to reject TSL 6 for Class B equipment.

TSL 5 offers the maximum efficiency levels for Class B equipment that provide positive NPV to the Nation. TSL 5 would likely save an estimated 0.031 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.009 quads. For the Nation as a whole, DOE projects that TSL 5 would result in a net decrease of $256 million in NPV, using a discount rate of 7 percent. The estimated emissions reductions at TSL 5 are 1.64 Mt of CO_2, up to 0.22 kt of NO_X, and up to 0.027 tons of Hg. These reductions have a value of up to $15.8 million for CO_2, $359,000 for NO_X, and $319,000 for Hg at a discount rate of 7 percent. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.014 GW at TSL 5.

At TSL 5, DOE projects that the average Class B beverage vending machine customers will experience an increase in LCC of $525 compared to the baseline. The mean PBP for the average Class B beverage vending machine customer at TSL 5 is projected to be 76.2 years compared to the purchase of baseline equipment.

As with TSL 6, DOE believes the majority of manufacturers would need to completely redesign all Class B equipment offered for sale at TSL 5. Therefore, DOE expects that manufacturers will have difficulty maintaining operating profit with larger MPC increases. Similar to TSL 6, manufacturers expect the higher end of the range of impacts to be reached at TSL 5 (*i.e.,* a decrease of 60.3 percent in INPV).

After carefully considering the analysis and evaluating the benefits and burdens of TSL 5, DOE finds that the benefits to the Nation of TSL 5 (*i.e.,* energy savings and emissions reductions, including environmental and monetary benefits) do not outweigh the burdens (*i.e.,* a decrease of $256 million in NPV and a decrease of 60.3 percent in INPV, as well as the economic burden on customers). Therefore, DOE proposes that the burdens of TSL 5 outweigh the benefits and TSL 5 is not economically justified. Therefore, DOE proposes to reject TSL 5 for Class B equipment.

TSL 4 would likely save an estimated 0.012 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.003 quads. For the Nation as a whole, DOE projects that TSL 4 would result in a net decrease of $4 million in NPV, using a discount rate of 7 percent. However, using a 3-percent discount rate, DOE projects that TSL 4 would result in a net increase of $1 million in NPV. The estimated emissions reductions at TSL 4 are 0.61 Mt of CO_2, up to 0.08 kt of NO_X, and up to 0.01 tons of Hg. Based on previously developed estimates, these reductions could have a value of up to $5.9 million for CO_2, $133,000 for NO_X, and $118,000 for Hg at a discount rate of 7 percent. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.005 GW at TSL 4.

At TSL 4, DOE projects that the average Class B beverage vending machine customer will experience a reduction in LCC of $39 compared to the baseline. The mean PBP for the average Class B beverage vending machine customer at TSL 4 is projected to be 6.9 years compared to the purchase of baseline equipment.

At TSL 4, DOE believes manufacturers would need to redesign most existing Class B equipment offered for sale. Therefore, DOE expects that manufacturers will have difficulty maintaining operating profit with high increases in production costs. Similar to TSL 5, it is more likely that the higher end of the range of impacts would be reached at TSL 4 (*i.e.,* a decrease of 6.1 percent in INPV). However, compared to the baseline, Class B equipment showed significant positive LCC savings on a national average and customers did not

experience an increase in LCC at TSL 4. The PBP calculated for Class B equipment was less than the lifetime of the equipment.

After carefully considering the analysis and evaluating the benefits and burdens of TSL 4, DOE finds that the benefits to the Nation of TSL 4 (*i.e.,* energy savings and emissions reductions, including environmental and monetary benefits) do not outweigh the burdens (*i.e.,* a decrease of $4 million in NPV and a decrease of up to 6.1 percent in INPV). DOE proposes that the burdens of TSL 4 outweigh the benefits and TSL 4 is not economically justified. Therefore, DOE proposes to reject TSL 4 for Class B equipment.

TSL 3 would likely save an estimated 0.010 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.003 quads. For the Nation as a whole, DOE projects that TSL 3 would result in no change in NPV (less than $0.5 million) using a discount rate of 7 percent. However, using a 3-percent discount rate, DOE projects that TSL 3 would result in a net increase of $8 million in NPV. The estimated emissions reductions at TSL 3 are 0.53 Mt of CO_2, up to 0.07 kt of NO_X, and up to 0.009 tons of Hg. Based on previously developed estimates, these reductions could have a value of up to $5.1 million for CO_2, $116,000 for NO_X, and $103,000 for Hg at a discount rate of 7 percent. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.005 GW at TSL 3.

At TSL 3, DOE projects that the average Class B beverage vending machine customer will experience a reduction in LCC of $49 compared to the baseline. The mean PBP for the average Class B beverage vending machine customer at TSL 3 is projected to be 6.0 years compared to the purchase of baseline equipment.

At TSL 3, DOE believes manufacturers would have to make some component switches to comply with the standard, but most manufacturers will not have to significantly alter their production process. These minor design changes would not raise the production costs beyond the cost of most equipment sold today, resulting in minimal impacts on industry value. Compared to the baseline, Class B equipment showed significant positive LCC savings on a national average and customers did not experience an increase in LCC at TSL 3. The PBP calculated for Class B equipment was less than the lifetime of the equipment.

After carefully considering the analysis and weighing the benefits and burdens of TSL 3, DOE proposes that for Class B equipment, TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. TSL 3 is technologically feasible because the technologies required to achieve these levels are already in existence. TSL 3 is economically justified because the benefits to the Nation (*i.e.,* an increase of $8 million in NPV using a 3-percent discount rate, energy savings, and emissions reductions, including the estimated monetary value of certain environmental benefits) outweigh the costs (*i.e.,* a decrease of 4.2 percent in INPV). Therefore, DOE is proposing TSL 3 as the energy conservation standard for Class B beverage vending machines in this NOPR.

For the reasons discussed above, DOE also requests comments on whether it should adopt a different TSL for Class B beverage vending machines.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's proposal has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this proposed rule was subject to review by OMB under the Executive Order. However, DOE has also determined that today's regulatory action is not an ''economically significant'' action under section 3(f)(1) of the Executive Order

Executive Order 12866 requires that each agency identify in writing the specific market failure or other problem that warrants new agency action, as well as assess the significance of that problem to determine whether any new regulation is necessary. Executive Order 12866, § 1(b)(1).

In the ANOPR for this rulemaking, DOE requested feedback and data on a number of issues related to Executive Order 12866 and the existence of a market failure in the beverage vending machine industry. In the ANOPR, DOE sought (1) Data on the efficiency levels of existing beverage vending machines in use by owner (*i.e.,* site owner or machine operator), electricity price, equipment class (Class A or Class B machines) and installation type (*i.e.,* indoors or outdoors); (2) comment on the availability of energy efficiency information to end users and the extent to which the information leads to informed choices, specifically given how such equipment is purchased; (3) detailed data on the distribution of energy efficiency levels for both the new site owner and equipment operator markets; (4) data on and suggestions for the existence and extent of potential market failures to complete an assessment of the significance of these failures and, thus, the net benefits of regulation; and (5) comments on the weight that should be given to ''external'' benefits resulting from improved energy efficiency of beverage vending machines that are not captured by the users of such equipment. These benefits include both environmental and energy security-related externalities that are not reflected in energy prices, such as reduced emissions of greenhouse gases and reduced use of natural gas and oil for electricity generation.

DOE prepared a regulatory impact analysis (RIA) for this rulemaking, which is contained in the TSD. The RIA is subject to review by the Office of Information and Regulatory Affairs (OIRA) in the OMB. 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 policy alternatives to this regulation, (3) a qualitative review of the potential impacts of the alternatives, and (4) the national economic impacts of the proposed standard.

The RIA assesses the effects of feasible policy alternatives to beverage vending machine standards and provides a comparison of the impacts of the alternatives. DOE evaluated the alternatives in terms of their ability to achieve significant energy savings at reasonable cost, and compared them to the effectiveness of the proposed rule. DOE analyzed these alternatives qualitatively with reference to the particular market dynamics of the beverage vending industry.

DOE identified the following major policy alternatives for achieving increased beverage vending machine energy efficiency:

- No new regulatory action
- Financial incentives, including tax credits and rebates
- Revisions to voluntary energy efficiency targets (*e.g.,* ENERGY STAR program criteria)
- Early replacement
- Bulk government purchases
- Prescriptive standards that would mandate design requirements (*e.g.,* lighting and refrigeration controls)

DOE qualitatively evaluated each alternative's ability to achieve significant energy savings at reasonable cost and compared it to the effectiveness of the proposed rule. The following

paragraphs discuss each policy alternative. (See chapter 17 of the TSD, Regulatory Impact Analysis, for further details.)

No new regulatory action. The case in which no regulatory action is taken for beverage vending machines constitutes the base case (or no action) scenario. By definition, no new regulatory action yields zero energy savings and a net present value of zero dollars.

Tax credits, rebates, and other financial incentives. DOE considered the impact of various financial incentives at both the ENERGY STAR Tier 2 level and higher efficiency levels, and examined the likelihood of an increase in customers purchasing high-efficiency equipment due to these financial incentives.

In considering the impact of financial incentives, DOE reviewed existing rebate programs for beverage vending machines. The majority are utility-sponsored rebate programs that provide incentives for incorporating lighting and temperature controllers. Also, similar rebates for other technologies (*e.g.,* ECM motors for evaporator fans) are provided in other industries, such as in the food sales industry for commercial refrigerated display cases, and could theoretically be adapted for beverage vending machines. However, utility rebate programs are aimed at the site of installation and not at the purchasers of the machines (as most of the controllers covered by the rebate are add-on devices), and utility rebates are only provided for reducing electricity at sites served by the utility. Because beverage vending machines purchased by large-scale bottlers may not remain on a given site, tracking the location of rebated equipment could be an issue for utilities. Also, because most utility rebate programs are not aimed at purchasers, these programs do not provide incentives for large bottlers to choose high-efficiency equipment.

Besides utility-sponsored rebate programs, other possibilities for programs include national manufacturer rebates, purchaser rebates, or tax incentives. Typically, these programs are advocated as a means to encourage households or organizations that are sensitive to the first cost of equipment to purchase or manufacture more costly efficient equipment that ultimately has a favorable payoff either to the purchaser, to society, or both. The incentive can be given to the buyer of the equipment, the rate payer, or the manufacturer, depending on which method is considered to be most administratively effective. However, the nature of the beverage vending machine industry and market makes this approach largely ineffective. At least 75 percent of beverage vending machines are purchased by two companies (Coca-Cola and PepsiCo) and their affiliated bottlers and distributors. In the ANOPR public meeting, PepsiCo stated that all beverage vending machines purchased by the company are required to meet ENERGY STAR Tier 2 levels. (PepsiCo, Public Meeting Transcript, No. 29 at p. 149) Coca-Cola stated that by 2010, the beverage vending machines purchased by the company would use half as much energy as they do now, which would meet at least ENERGY STAR Tier 1 levels. 73 FR 34104. These companies purchase ENERGY STAR equipment despite the first-cost increase because it improves their public image, which results in higher sales in the long run. (Coca-Cola, Public Meeting Transcript, No. 29 at pp. 154–56) Direct compensation for the energy savings is not assured but comes only through a negotiation with the site. Because the driving economic force for these companies is product sales, not equipment purchases, lowering the purchase price of equipment would make no significant difference in market behavior, and the program would simply transfer the amount of tax credit or rebate to the rebated entity without having induced extra purchases of efficient beverage vending machines. Regarding the use of rebates or other incentives beyond Tier 2 efficiency levels, it is not clear how the buying policy of Coca-Cola and PepsiCo would be influenced by tax credits or rebates. However, the companies are large enough to successfully finance the higher costs of beverage vending machines more efficient than Tier 2 with or without tax credits or rebates.

While rebates or tax credits may affect small purchasers, their influence over the market for beverage vending machines is marginal. In addition, because of the existing market dynamics, a significant portion of any economic incentive paid for the purchase of Tier 2 efficiency equipment could be free riders, those that would purchase Tier 2 equipment absent incentives. This is particularly true of rebates paid to manufacturers. Rebates to purchasers would have to be limited to small volumes of purchases by individual rebatees and target non-bottler, site-owned equipment. Tax credits to purchasers face similar issues. Currently, no national manufacturer rebates, purchaser rebates, or tax incentives are available for enhancement of beverage vending machine efficiency.

DOE sees value in the continued use of rebates for lighting and temperature controller technologies even under the standards proposed in this notice of proposed rulemaking. Because the impact of these technologies is not captured in the DOE test procedure for beverage vending machines, employing these technologies in the field will continue to provide reductions in energy consumption beyond those that can be achieved by the standards proposed for beverage vending machines. The reductions will continue to accrue at the site of installation; therefore, these rebates, primarily for the purchase of aftermarket controller equipment, should continue to be provided to the installation site directly.

Revisions to voluntary energy efficiency targets (e.g., ENERGY STAR). ENERGY STAR currently has two levels of efficiency targets: Tier 1 and Tier 2. The current program appears to have been effective at inducing large-scale adoption of ENERGY STAR Tier 1 equipment. Furthermore, the beverage vending industry expects that ENERGY STAR will be highly effective in securing purchases of Tier 2 equipment due to the favorable response of the two purchasers who essentially define the market, Coca-Cola and PepsiCo. While it is possible that voluntary programs for equipment more efficient than Tier 2 would also be effective, DOE lacks a quantitative basis to determine how effective such a program might be. As noted previously, broader economic and social considerations are in play than simple economic return to the equipment purchaser. DOE lacks the data necessary to quantitatively project the degree to which such voluntary programs for more expensive, higher efficiency equipment would modify the market.

Bulk Government purchases and early replacement incentive programs: DOE also considered, but did not analyze, the potential of bulk Government purchases and early replacement incentive programs as alternatives to the proposed standards. Bulk purchases would have very limited impact on improving the overall market efficiency of beverage vending machines because they are a small part of the total market and the volume of high-efficiency equipment purchases that the Federal Government might make directly (versus equipment installed by bottlers at Federal Government sites). In the case of replacement incentives, several policy options exist to promote early replacement, including a direct national program of customer incentives, incentives paid to utilities to promote an early replacement program, market promotions through equipment manufacturers, and replacement of

Federally owned equipment. In considering early replacements, DOE estimates that the energy savings realized through a one-time early replacement of existing stock equipment does not result in energy savings commensurate to the cost to administer the program. Consequently, DOE did not analyze this option in detail.

Prescriptive standards that would mandate design requirements (e.g., lighting and refrigeration controls). EPCA provides that standards regulating the energy use of certain equipment may be design standards, which require specific features in the design of the equipment; or performance standards, which describe a required level of equipment performance (*e.g.,* maximum kWh/year energy consumption) and provide a manufacturer with discretion in determining how best to meet that performance level. (42 U.S.C. 6291(6)) However, EPCA does not include beverage vending machines in the list of equipment for which a design requirement is acceptable. (42 U.S.C. 6291(6)(B), 6292(a)) Furthermore, EPCA specifically requires DOE to base its test procedure for this equipment on ANSI/ASHRAE Standard 32.1–2004, ''Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.'' (42 U.S.C. 6293(b)(15)) The test methods in ANSI/ASHRAE Standard 32.1–2004 consist of means to measure energy consumption.

For these reasons, DOE does not intend to develop design requirements for this equipment. Instead, DOE intends to develop standards that allow a maximum level of energy use for each beverage vending machine, and manufacturers could meet these standards with their own choice of design methods.

Performance standards. The difficulty in using these non-regulatory alternatives must be gauged against the more direct benefits calculated for the performance standards DOE is proposing in this NOPR. Based on its qualitative review, DOE is not confident that any of the alternatives it examined would save as much energy as today's proposed rule, and the financial incentives in particular may engender significant free ridership issues. Also, several of the alternatives would require new enabling legislation, since authority to carry out those alternatives does not exist.

B. Review Under the Regulatory Flexibility Act/Initial Regulatory Flexibility Analysis

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, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov.*

For the beverage vending machine manufacturing industry, small businesses, as defined by the SBA, are manufacturing enterprises with 500 or fewer employees. DOE used the small business size standards published on August 28, 2008, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. (61 FR 3286 and codified at 13 CFR Part 121.) The size standards are listed by North American Industry Classification System (NAICS) code and industry description. Beverage vending machine manufacturing is classified under NAICS 333311.

The beverage vending machine industry is characterized by both large and small manufacturers that service a wide range of customers, including large bottlers and direct end-users. Almost all beverage vending machines sold in the United States are manufactured domestically. Three major companies supply roughly 90 percent of all equipment sales. Most of the sales for these companies are made to a few major bottlers. One of the major manufacturers with significant market share is considered a small business. The remaining 10 percent of industry shipments is believed to be supplied by five manufacturers. All of these companies that do not supply the major bottlers are considered to be small businesses.

Before issuing this notice of proposed rulemaking, DOE, through its contractor, contacted all identified small business manufacturers. These manufacturers were provided a questionnaire seeking information to better understand the impacts of the proposed standards on small businesses and how these impacts differ between large and small manufacturers. The small business interview questionnaire is a condensed version of the manufacturer interview guide described in the manufacturer impact analysis, chapter 13 of the TSD, and includes the following questions:

- Are you aware of the US Department of Energy's (DOE's) ongoing rulemaking to establish national minimum energy conservation standards for refrigerated beverage vending machines? [45] Would you like to be added to DOE's e-mail database for updates relating to this rulemaking?
- We are assessing the impacts of a potential energy conservation standard on small businesses. Is your company a small business (defined as less than 500 employees by the US Small Business Administration (SBA), including all subsidiaries and parent companies, and employees in all countries where you operate)?
- What are the key issues for your company regarding energy conservation standards for refrigerated beverage vending machines and this rulemaking?
- DOE would like to understand the small-business beverage vending machine industry in general and your company in particular. Could you please provide information on the following:
- Is your company a domestic or international company?
- What types of refrigerated beverage vending machines do you manufacture? Do you manufacture Class A or Class B refrigerated beverage vending machines, or both? [46] [47] What sizes of refrigerated beverage vending machines do you manufacture, measured in vendible capacity and/or refrigerated volume? Could you provide energy efficiency figures for those identified models? Does your equipment meet ENERGY STAR Tier I, Tier II, or any level above those energy efficiency levels? [48] [49]
- Do you manufacture equipment other than refrigerated beverage vending machines? Do you manufacture any niche or specialty type refrigerated beverage vending machines that do not easily fall in the categories from the previous question?

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[45] For information on DOE's efficiency standards rulemaking for beverage vending machines, visit the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines.html.*

[46] ''Class A'' refers to a beverage vending machine that cools the entire internal volume. Class A machines are also referred to as ''fully-cooled'' machines.

[47] ''Class B'' refers to any beverage vending machine not considered to be Class A. Class B machines are often ''zone-cooled'' machines, in that they typically cool only a fraction of the volume of the machine.

[48] Tier I: Energy Consumption ≤0.55 [8.66 + (0.009 × Vendible Capacity)].

[49] Tier II: Energy Consumption ≤0.45 [8.66 + (0.009 × Vendible Capacity)].

• What are the types of customers you serve in the refrigerated beverage vending machine market?

• Would a new energy conservation standard for refrigerated beverage vending machines (whereby all your competitors are also required to meet the same minimum level of energy consumption for their machines) cause any burdens on your business? If so, please explain. Please consider costs such as new designs, capital investment, prototype testing, and marketing that might be required.

• DOE would like to understand your company's employment impacts as a result of standards. Would your company consider relocating manufacturing to outside the United States as a result of new energy conservation standards? If not, would standards cause your domestic employment level to change (increase or decrease)?

• Are there any reasons that a small business such as yours might be at a disadvantage relative to a larger business under mandatory energy conservation standards? Please consider such factors as technical expertise, access to capital, bulk purchasing power for materials, etc. If so, would you be willing to participate in a full manufacturer interview where DOE will request detailed information about your business and possible impacts due to energy conservation standards?

DOE reviewed the standard levels considered in this notice of proposed rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Based on this review, DOE has prepared an IRFA for this rulemaking. The IRFA describes potential impacts on small businesses associated with beverage vending machine design and manufacturing.

The potential impacts on beverage vending machine manufacturers are discussed in the following sections of this IRFA. DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

1. Reasons for the Proposed Rule

Part A of subchapter III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles.[50] The amendments to EPCA contained in the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, include new or amended energy conservation standards and test procedures for some of these products, and direct DOE to undertake rulemakings to promulgate such requirements. In particular, section 135(c)(4) of EPACT 2005 amends EPCA to direct DOE to prescribe energy conservation standards for beverage vending machines (42 U.S.C. 6295(v)). Hence, DOE is proposing energy conservation standards for refrigerated bottle or canned beverage vending machines.[51]

2. Objectives of and Legal Basis for the Proposed Rule

EPCA provides that any new or amended standard for beverage vending machines 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) and (v)). EPCA precludes DOE from adopting any standard that would not result in significant conservation of energy (42 U.S.C. 6295(o)(3)(B) and (v)). Moreover, DOE may not prescribe a standard for certain equipment if no test procedure has been established for that equipment, or if DOE determines by rule that the standard is not technologically feasible or economically justified and will not result in significant conservation of energy (42 U.S.C. 6295(o)(3)(A)(B) and (v)). To determine whether economic justification exists, DOE reviews comments received and conducts analysis to determine whether the economic benefits of the proposed standard exceed the burdens to the greatest extent practicable, taking into consideration seven factors set forth in 42 U.S.C. 6295(o)(2)(B) and (v). (See section II.B of this preamble.)

EPCA also states that the Secretary may not prescribe an amended or new standard if interested parties have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States (42 U.S.C. 6295 (o)(4) and (v)). Further information concerning the background of this rulemaking is provided in chapter 1 of the TSD.

3. Description and Estimated Number of Small Entities Regulated

To establish a list of small beverage vending machine manufacturers, DOE examined publicly available data and contacted manufacturers to determine if they meet the SBA's definition of a small manufacturing facility and if their manufacturing facilities are located within the United States. Based on this analysis, DOE confirmed that there are six small manufacturers of beverage vending machines.

One of these six small manufacturers is one of the top three major manufacturers, who supply roughly 90 percent of all equipment sales. The full line of products offered by this small manufacturer and the remaining two major manufacturers, which are considered large businesses, are covered under this rulemaking (i.e., equipment that dispenses refrigerated bottled or canned beverages). The remaining five small manufacturers comprise approximately 10 percent of industry shipments for covered equipment. See chapter 3 of the TSD for further details on the beverage vending machine market. In its examination of the beverage vending machine industry, DOE has determined that these small business manufactures with small market shares differ significantly from the large manufacturers. The primary difference between these small business manufacturers and the large business manufacturers is that these five small business manufacturers produce a wide variety of specialty and niche equipment that are not covered under this rulemaking. The specialty and niche equipment that these small manufacturers produce include machines that dispense a wide range of items including snacks, heated drinks, electronic goods, DVDs, bowling supplies, and medical products. Furthermore, unlike the major manufacturers, these small business manufacturers do not sell equipment to the major bottlers because they do not produce covered equipment in the necessary volumes. Instead, these manufacturers rely on providing customized equipment in much smaller volumes.

Requests for interviews were delivered electronically to the six manufacturers that met the small business criteria. DOE received

[50] This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Public Law 109–58. Similarly, Part C, *Certain Industrial Equipment,* was redesignated Part A–1.

[51] Because of its placement in Part A of Title III of EPCA, the rulemaking for beverage vending machine energy conservation standards is bound by the requirements of 42 U.S.C. 6295. However, since beverage vending machines are commercial equipment, DOE intends to place the new requirements for beverage vending machines in Title 10 of the Code of Federal Regulations (CFR), Part 431 (''Energy Efficiency Program for Certain Commercial and Industrial Equipment''), which is consistent with DOE's previous action to incorporate the EPACT 2005 requirements for commercial equipment. The location of the provisions within the CFR does not affect either their substance or applicable procedure, so DOE is placing them in the appropriate CFR part based on their nature or type.

responses from fewer than half and conducted an on-site interview with only one. In the questionnaire and during the interview, DOE requested information that would determine if there are differential impacts on small manufacturers that may result from new energy conservation standards. See chapter 13 of the TSD for further discussion about the methodology DOE used in its analysis of manufacturer impacts to include small manufacturers.

4. Description and Estimate of Compliance Requirements

Potential impacts on manufacturers include impacts associated with beverage vending machine design and manufacturing. The level of research and development needed to meet energy conservation standards increases with more stringent standards. As mentioned previously, DOE examined the level of impacts that small manufacturers would incur by identifying small business manufacturers and, through its contractor, sending them a short questionnaire seeking information to better understand the impacts of the proposed standard that are unique to small manufacturers. Since not all of the small business manufacturers responded to the questionnaire, it is difficult to specifically quantify how the impacts of the proposed standards differ between large and small manufacturers. However, DOE found that, for the small business manufacturer with a major market share, the impacts of the proposed standard would not differ greatly from those of its larger competitors, and, for the remaining small business manufacturers, the impacts would not be significant.

Small Business Manufacturer With a Major Market Share

The small business manufacturer that has a major market share in covered equipment will not be disproportionately disadvantaged by the proposed standard. It has a large shipment volume as a major supplier to the large bottlers and its access to capital is nearly identical to its larger competitors. Its large shipment volume allows it to distribute the added cost of compliance across its products, similar to the large manufacturers. Correspondingly, it echoed the large manufacturers' concerns about new energy conservation standards, including conversion costs needed to meet standards, meeting customer needs, and current market conditions. DOE found no significant differences in the R&D emphasis or marketing strategies between this small business manufacturer with a major market share and large manufacturers. As a result, DOE does not believe the impacts of the proposed standard will be significantly different for the small business manufacturer with a large market share when compared to those expected for the large business manufacturers.

Small Business Manufacturers With Small Market Shares

DOE does not expect the small businesses with small market shares to be compromised by the proposed energy conservation standard. DOE estimates that only approximately 40 percent of their offered vending equipment is covered by the proposed standard. The majority of equipment offered is specialty or niche equipment. As a result, the primary source of revenue for these small manufacturers comes from supplying a market underserved by the major manufacturers of covered equipment. Any cost disadvantage experienced by these small manufacturers as a result of the proposed standard can be balanced by the relatively larger profit margins achievable by charging premium prices for niche equipment. As a result, DOE believes the proposed standard will not affect the competitive position of the small business manufacturers with small market shares in covered equipment.

To estimate a portion of the differential impacts of the proposed standard on the small manufacturers with small market shares, DOE compared their cost of compliance for testing and certifying covered equipment with that of the major manufacturers (the two large and one small business manufacturers that account for 90 percent of industry shipments). Manufacturers must test the energy performance of each basic model it manufacturers in order to determine compliance with energy conservation standards and testing requirements. Therefore, DOE examined the number of basic models available from each manufacturer to determine an estimate for the differential in overall compliance costs. The number of basic models attributed to each manufacturer is based on an examination of the different models advertised by each. DOE estimates the cost of testing a piece of covered equipment to be approximately $2,000. A typical major manufacturer has approximately 23 basic models, approximately 85 percent of which are covered and would require separate standards compliance certifications. Therefore, DOE estimates that a typical major manufacturer will incur approximately $44,013 in annual costs for standards compliance certifications. DOE estimates that a typical small manufacturer with small market share has approximately 27 basic models, 44 percent of which are covered and would require separate standards compliance certifications. DOE estimates that a typical small manufacturer will incur approximately $14,380 in annual costs for standards compliance certifications. According to this comparison, the cost of certification for a small manufacturer with small market share is significantly lower than that of a major manufacturer.

As stated above, DOE expects that there will be some differential impacts associated with beverage vending machine design and manufacturing on small manufacturers. DOE requests comments on how small business manufacturers will be affected due to new energy conversation standards. Specifically, DOE requests comments on the compliance costs and other impacts to small manufacturers that do not supply the high-volume customers of beverage vending machines.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

The primary alternatives to the proposed rule considered by DOE are the other TSLs besides the ones being proposed today, TSL 6 for Class A and TSL 3 for Class B. As discussed in section VI.B subsection 6, DOE expects that the differential impact on small beverage vending machine manufacturers would be less severe in moving from TSL 5 to proposed TSL 6 for Class A than it would be in moving from TSL 6 to TSL 7. For Class B machines, DOE expects that the differential impact on small beverage vending machine manufacturers would be less significant in moving from TSL 2 to proposed TSL 3 than it would be in moving from TSL 4 to TSL 5. While lower TSLs (i.e., TSLs 1–5 for Class A and TSLs 1 and 2 for Class B) would have less impact on all manufacturers affected by this rulemaking, including the small manufacturers, these TSLs do not meet the statutory requirement that DOE implement the standard that is designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified.

In addition, the TSD includes a regulatory impact analysis (RIA) (chapter 17 of the TSD), which discusses the following policy alternatives: (1) No new regulatory

action, (2) financial incentives including rebates or tax credits, (3) revisions to voluntary energy efficiency targets such as ENERGY STAR program criteria, (4) bulk government purchases, (5) early replacement incentive programs, and (6) prescriptive standards that would mandate design requirements (*e.g.,* lighting and refrigeration controls). DOE does not intend to consider these alternatives further because they are either not feasible to implement, or not expected to result in energy savings as large as those that would be achieved by the standard levels under consideration.

Section 603(c) of the RFA lists the following as alternatives that agencies should consider in an IRFA: (1) Establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities, (2) clarification, consolidation, or simplification of compliance and reporting requirements for small entities, (3) use of performance rather than design standards, and (4) exemption for certain small entities from coverage of the rule, in whole or in part.[52]

For alternatives (1) and (2) above, testing and reporting of certification and compliance with the proposed energy conservation standards are expected to be a relatively minor component of compliance compared with manufacturers' other actions to meet the standard. In addition, as explained further in the discussion of alternative (4), DOE is not authorized to delay the setting of the standard past August 9, 2009, and the standard must apply to products manufactured 3 years after the date of publication of the final rule. (42 U.S.C. 6295(v)(2) and (3). Therefore, DOE cannot establish different energy standards or a different timetable for small entities, as contemplated by alternative (1). The proposed rule is a performance standard rather than a prescriptive standard, so alternative (3) is not applicable to the proposed rule.

Alternative (4) considers exemptions for small entities in whole or in part. The authority granted to DOE to promulgate the proposed rule under the Energy Policy Act of 2005 (EPACT 2005) does not allow for exemptions in whole or in part. EPACT 2005 amended the Energy Policy and Conservation Act by adding new subsections 325(v)(2), (3) and (4), which direct the Secretary of Energy to issue, by rule, energy conservation standards for refrigerated bottled or canned beverage vending machines. (42 U.S.C. 6295(v) (1), (2), and (3))[53] The proposed standards apply *to all beverage vending machines manufactured 3 years after publication of the final rule establishing the energy conservation standards and offered for sale in the United States* (42 U.S.C. 6295(v)(4)) [emphasis added].[54] However, a manufacturer can petition DOE's Office of Hearing and Appeals (OHA) for exception relief from the energy conservation standard pursuant to OHA's authority under section 504 of the DOE Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003. OHA grants such relief on a case-by-case basis if it determines that a manufacturer has demonstrated that meeting the standard would cause hardship, inequity, or unfair distributions of burdens.

Chapter 13 of the TSD contains additional information about the impact of this rulemaking on manufacturers. As mentioned above, the other policy alternatives are described in section VI.A of the preamble and in the Regulatory Impact Analysis (chapter 17 of the TSD). Since the impacts of these policy alternatives are less than the impacts described above for TSL 6 for Class A and TSL 3 for Class B, DOE expects that the impacts on small manufacturers of these alternatives would also be less than the impacts described above for the proposed standard levels. DOE requests comment on the impacts on small manufacturers for these and any other possible alternatives to the proposed rule. DOE will consider any comments received regarding impacts on small manufacturers for all the alternatives identified, including those in the RIA, for the final rule.

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE is preparing a draft environmental assessment of the impacts of the potential standards. The assessment will include an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change as well as other types of environmental impacts. DOE anticipates completing a Finding of No Significant Impact (FONSI) before publishing the final rule on beverage vending machines, 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 draft EA can be found in chapter 16 of the TSD.

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 have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735.) DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations on energy conservation for the equipment that is the subject of today's proposed rule. Specifically, EPCA provides that States are preempted from adopting new standards once DOE publishes a final rule. Once the final rule takes effect, State standards that were in effect at the time of the publication of the final rule are preempted. (42 U.S.C. 6295(ii)) States can petition DOE for waiver from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the

[52] *Id.* at 36.

[53] Note that the relevant statutory provisions were renumbered pursuant to section 316(d)(1) of EISA, Public Law 110–140.

[54] This provision was redesignated by EISA, section 316(d)(1), as 42 U.S.C. 6295(v)(3).

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), requires each Federal agency to assess the effects of Federal regulatory actions on State, local and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA, (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's proposed rule does not impose expenditures of $100 million or more on the private sector. It does not contain a Federal intergovernmental mandate.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of this notice of proposed rulemaking and the Regulatory Impact Analysis section of the TSD respond to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by sections 325(o), 345(a) and 342(c)(4)(A) of EPCA (42 U.S.C. 6295(o), 6316(a) and 6313(c)(4)(A)), today's proposed rule would establish energy conservation standards for beverage vending machines that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the Regulatory Impact Analysis in the TSD.

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

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

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies 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 OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science

and Technology (OSTP), issued its Final Information Quality Bulletin for Peer Review (Bulletin). 70 FR 2664, (January 14, 2005) The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemakings analyses are ''influential scientific information.'' The Bulletin defines ''influential scientific information'' as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (January 14, 2005)

In response to OMB's Bulletin, DOE conducted a formal peer review of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. The Energy Conservation Standards Rulemaking Peer Review Report dated February 2007 has been disseminated and is available at *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VII. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are provided in the **DATES** and **ADDRESSES** sections at the beginning of this document. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Please hand-deliver requests to speak to the address shown under the heading ''*Hand Delivery/Courier*'' in the **ADDRESSES** section of this NOPR, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Also, requests may be sent by mail to the address shown under the heading ''*Postal Mail*'' in the **ADDRESSES** section of this NOPR, or by e-mail to *Brenda.Edwards@ee.doe.gov.*

Parties requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE asks parties selected to be heard to submit a copy of their statements at least two weeks before the public meeting, either in person, by postal mail, or by e-mail as described in the preceding paragraph. Please include an electronic copy of your statement on a computer diskette or compact disk when delivery is by postal mail or in person. Electronic copies must be in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format. At its discretion, DOE may permit any person who cannot supply an advance copy of his or her statement to participate, if that person has made alternative arrangements with the Building Technologies Program. In such situations, the request to give an oral presentation should ask for alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record and transcribe the proceedings. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings, and any other aspect of the proposed rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to the proposed rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for proper conduct of the public meeting.

DOE will include the entire record of this proposed rulemaking, including the transcript from the public meeting, in the docket for this rulemaking. For access to the docket to read the transcript, 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. Any person may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding all aspects of this NOPR before or after the public meeting, but no later than the date provided at the beginning of this notice of proposed rulemaking. Please submit comments, data, and information electronically to the following e-mail address: *beveragevending.rulemaking@ee.doe.gov.* Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EERE–2006–STD–0125 and/or RIN 1904–AB58, and whenever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document. No faxes will be accepted.

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.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the interest.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation.

Issued in Washington, DC, on May 22, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend Chapter II of Title 10, Code of Federal Regulations, Part 431 to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. In § 431.292 add, in alphabetical order, new definitions for ''bottled or canned beverage'', ''Class A'', ''Class B'', and ''V'' to read as follows:

§ 431.292 Definitions concerning refrigerated bottled or canned beverage vending machines.

* * * * *

Bottled or canned beverage means a beverage in a sealed container.

Class A means a refrigerated bottled or canned beverage vending machine that is fully cooled.

Class B means any refrigerated bottled or canned beverage vending machine not considered to be Class A.

* * * * *

V means the refrigerated volume (ft^3) of the refrigerated bottled or canned beverage vending machine, as measured by AHAM HRF–1–2004 (incorporated by reference, see § 431.293).

3. Section 431.293 is revised to read as follows:

§ 431.293 Materials incorporated by reference.

(a) *General.* DOE incorporates by reference the following standards into subpart Q of part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or visit *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* This material is also available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, 202–586–2945, or visit *http://www.eere.energy.gov/buildings/appliance_standards.* Standards can be obtained from the sources listed below.

(b) *ANSI.* American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or visit *http://www.ansi.org.*

(1) ANSI/AHAM HRF–1–2004, Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers, approved July 7, 2004, IBR approved for § 431.294.

(2) ANSI/ASHRAE Standard 32.1–2004, Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages, approved December 2, 2004, IBR approved for § 431.294.

4. In subpart Q, add an undesignated center heading and § 431.296 to read as follows:

Energy Conservation Standards

§ 431.296 Energy conservation standards and their effective dates.

Each refrigerated bottled or canned beverage vending machine manufactured on or after 3 years from the date of publication of the final rule, shall have a daily energy consumption (in kilowatt hours per day) that does not exceed the following:

Equipment class	Maximum daily energy consumption *kilowatt hours per day*
Class A	$0.055 \times V + 2.56$
Class B	$0.073 \times V + 3.16$

[FR Doc. E9–12410 Filed 5–26–09; 4:15 pm]

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